

CHAPTER 408. LABOR

WORKMEN'S COMPENSATION COMMISSION

Act 357 of 1947

408.1-408.33 Repealed. 1969, Act 317, Eff. Dec. 31, 1969.

EXECUTIVE REORGANIZATION ORDER
E.R.O. No. 1999-1

408.40 Transfer of Michigan strategic fund as an autonomous entity in the department of management and budget; transfer of powers and duties of certain economic and development programs and functions to the Michigan strategic fund; provisions applicable to Michigan economic development corporation; creation and transfer of certain programs and functions to the department of career development.

WHEREAS, Article V, Section 2, of the Constitution of the state of Michigan of 1963 empowers the Governor to make changes in the organization or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, Article V, Section 8, of the Constitution of the state of Michigan of 1963 provides that each principal department shall be under the supervision of the Governor, unless otherwise provided by the Constitution; and

WHEREAS, Article V, Section 1, of the Constitution of the state of Michigan of 1963 vests the executive power in the Governor; and

WHEREAS, Michigan's already successful economic development programs will benefit from greater consolidation and can continue to improve its effectiveness and efficiency; and

WHEREAS, successful state economic development programs require long-term continuity, yet maximum flexibility to compete effectively in the national and international market place; and

WHEREAS, successful state economic development programs can further be improved by enhanced cooperation with local economic development programs; and

WHEREAS, the authority for the Michigan Strategic Fund to enter into interlocal agreements includes: Article VII, Section 28 of the Constitution of the state of Michigan of 1963, the Michigan Strategic Fund Act, Act No. 270 of the Public Acts of 1984, as amended, being Sections 125.2001 et seq. of the Michigan Compiled Laws, and the Urban Cooperation Act, Act No. 7 of the Public Acts of 1967, Ex. Sess., as amended, being Sections 124.501 et seq. of the Michigan Compiled Laws; and

WHEREAS, providing Michigan citizens with career development and training opportunities will allow them to succeed in life and will strengthen Michigan's reputation as the state with the most highly skilled people; and

WHEREAS, the state can effectively and efficiently carry out this function by establishing a new principal department, the Department of Career Development.

NOW, THEREFORE, I, John Engler, Governor of the state of Michigan, pursuant to the powers vested in me by the Constitution of the state of Michigan of 1963 and the laws of the state of Michigan, do hereby Order the following:

I. DEFINITIONS

As used herein:

A. The Michigan Jobs Commission means the temporary agency created under Executive Order 1993-2.

B. The Department of the Michigan Jobs Commission means the principal department created in Executive Order 1994-26.

C. The Michigan Strategic Fund means the entity created under Act 270 of 1984, as amended, being Section 125.2001 et seq. of the Michigan Compiled Laws and includes the Michigan Strategic Fund Board.

II. TRANSFER OF THE MICHIGAN STRATEGIC FUND TO THE DEPARTMENT OF MANAGEMENT AND BUDGET

A. The Michigan Strategic Fund, created pursuant to the Michigan Strategic Fund Act, Act No. 270 of the Public Acts of 1984, as amended, being Section 125.2001 et seq. of the Michigan Compiled Laws, with all its statutory authority, powers, duties, and functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds, including the functions of budgeting, procurement, personnel and management related functions, as constituted by Section III of this Executive Order, is hereby transferred to and shall be an autonomous entity in the Department of Management and Budget, without qualification as to type in the same manner as the Michigan Employment Security Commission was designated an autonomous entity within the Michigan Department of Labor pursuant to the Executive Organization Act of 1965, Section 379 of Act No. 380 of the Public Acts of 1965, being Section 16.479 of the Michigan Compiled Laws. This transfer includes, but is not limited to, bond, note, loan, grant, reserve and trust funds, subject to any agreement with note and bond holders, borrowers, grant recipients, or contract holders.

B. All administrative or housekeeping functions, including budgeting, procurement, personnel and management related functions of the Michigan Strategic Fund as contained in the Michigan Strategic Fund

Act, Sections 6, 7 and 24 of Act No. 270 of the Public Acts of 1985, as amended, being Sections 125.2006, 125.2007 and 125.2024 of the Michigan Compiled Laws shall be performed under the direction and supervision of the president of the Michigan Strategic Fund. The Michigan Strategic Fund president shall be the appointing authority for employees of the Michigan Strategic Fund.

C. The director of the Department of the Michigan Jobs Commission shall develop and implement a plan to separate the functions transferred to the Strategic Fund by this Executive Order from the remaining functions of the department. The director of the Department of the Michigan Jobs Commission shall provide executive direction and supervision for implementation of the transfers contained in this Executive Order. The administrative unit of the Department of the Michigan Jobs Commission, including budget, personnel, information systems, internal audit, procurement, legislative, public affairs, executive office, finance and office services and other related administrative functions, shall be separated in a manner that the director deems best serves the ongoing need for these services by the Michigan Strategic Fund and the remainder of the Department of the Michigan Jobs Commission.

D. As of the effective date of this Executive Order, the Board position designated in Section 2005(3) of the Michigan Strategic Fund Act, Act No. 270 of 1984, as amended, being Section 125.2005(3) of the Michigan Compiled Laws, for the Director of the Department of Commerce, which was transferred to the Director of the Department of the Michigan Jobs Commission by Executive Order 1994-26 is hereby transferred to the Director of the Department of Management and Budget.

E. All records, personnel, property and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available to the Department of the Michigan Jobs Commission for the activities, powers, duties, functions and responsibilities transferred by this Order are hereby transferred to the Michigan Strategic Fund.

F. All rules, orders, contracts and agreements relating to the functions transferred to the Michigan Strategic Fund lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or repealed.

G. Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order.

III. CONSOLIDATION OF ECONOMIC DEVELOPMENT FUNCTIONS INTO THE MICHIGAN STRATEGIC FUND

A. Pursuant to Article V, Section 2 of the Constitution of the state of Michigan of 1963, all the statutory authority, powers, duties, and functions, records, personnel, property, unexpended balances of appropriations, allocations, grants or other funds, including the functions of budgeting, procurement, personnel and management related functions of the following enumerated programs and functions are transferred to and reorganized into the Michigan Strategic Fund.

1. Michigan Economic Growth Authority

The Michigan Economic Growth Authority, created pursuant to the Michigan Economic Growth Authority Act, Act No. 24 of the Public Acts of 1995, as amended, being Section 207.801 et seq. of the Michigan Compiled Laws, and all of its statutory authority, powers, duties, functions and responsibilities, including the functions of budgeting, procurement, personnel and management related functions, are transferred to the Michigan Strategic Fund. The Michigan Economic Growth Authority shall exercise the prescribed statutory powers, duties and functions including the prescription of rules and adjudication independently of the Michigan Strategic Fund.

2. Plant Rehabilitation and Industrial Development Districts

All the authority, powers, duties, functions and responsibilities, including the functions of budgeting, procurement, personnel and management related functions of the Department of Commerce under Act No. 198 of the Public Acts of 1974, being Sections 207.551 et seq. of the Michigan Compiled Laws, which were transferred to the Chief Executive Officer of the Michigan Jobs Commission by Executive Order 1994-14 and subsequently transferred by Executive Order 1994-26 to the Department of the Michigan Jobs Commission are hereby transferred to the president of the Michigan Strategic Fund.

3. State Education Tax Exclusion

All the authority, powers, duties, functions and responsibilities, including the functions of budgeting, procurement, personnel and management related functions of the State Treasurer to grant exclusions from the State Education Tax under Section 14a of Act No. 198 of the Public Acts of 1974, as amended, being Section 207.564a of the Michigan Compiled Laws, transferred to the Chief Executive Officer of the Michigan Jobs Commission under Executive Order 1995-2 are hereby transferred to the president of the Michigan Strategic Fund.

4. Personal Property Tax Exemption

All the authority, powers, duties, functions and responsibilities, including the functions of budgeting, procurement, personnel and management related functions of the Department of the Michigan Jobs Commission under Act No. 328 of the Public Acts of 1998, being Section 211.9f of the Michigan Compiled Laws, are hereby transferred to the president of the Michigan Strategic Fund.

5. Community Development Block Grants

All the authority, powers, duties, functions, grants and responsibilities, including the functions of budgeting, procurement, personnel and management related functions of the federal Community Block Grant program operated by the Department of Commerce pursuant to Title I of the Housing and Community Development Act of 1974, as amended, being 42 USC 5300 et seq., commonly known as the Michigan Community Development Block Grant Program, transferred by Executive Order 1994-26 to the Department of the Michigan Jobs Commission are hereby transferred to the Michigan Strategic Fund.

6. Economic Development Job Training

All the authority, powers, duties, functions, grants and responsibilities, including the functions of budgeting, procurement, personnel and management related functions of the Department of the Michigan Jobs Commission to review applications and award grants under the Economic Development Job Training program provided for in Act No. 306 of the Public Acts of 1998, Executive Order 1993-3 and Executive Order 1994-26 are hereby transferred to the Michigan Strategic Fund. The functions performed by the Office of Economic Development Job Training and the related staff and funding sources, including all workforce development and recruitment specialists positions and funding sources, including any Employment Service Agency staff assigned to this program, along with the federal funding for their positions, are hereby transferred to the Michigan Strategic Fund. The Chief Executive Officer of the Department of the Michigan Jobs Commission and the Director of the Employment Service Agency shall jointly determine the positions to be transferred.

7. Department of Economic Expansion

All the authority, powers, duties, functions and responsibilities, including the functions of budgeting, procurement, personnel and management related functions of the Department of Economic Expansion and the Economic Expansion Council created under Act No. 116 of the Public Acts of 1963, as amended, being Section 125.1201 et seq. of the Michigan Compiled Laws, transferred to the Department of Commerce pursuant to Section 332 of the Executive Organization Act of 1965, Act No. 380 of the Public Acts of 1965, as amended, being Section 16.332 of the Michigan Compiled Laws, transferred to the Chief Executive Officer of the Michigan Jobs Commission by Executive Order 1993-9, transferred to the Department of the Michigan Jobs Commission by Executive Order 1994-26 are hereby transferred to the Michigan Strategic Fund.

8. Michigan International Trade Authority

All the statutory authority, powers, duties, functions and responsibilities, including the functions of budgeting, procurement, personnel and management related functions of the Michigan International Trade Authority created as the Michigan Export Development Authority by the Michigan Export Development Authority Act, Act No. 157 of the Public Acts of 1986, as amended, being Section 447.151 et seq. of the Michigan Compiled Laws, renamed the Michigan International Trade Authority by Executive Order 1994-6 and as transferred from the Department of Commerce to the Department of the Michigan Jobs Commission in Executive Order 1994-26, transferred to the Michigan Jobs Commission Board by Executive Order 1995-22 are hereby transferred to the Michigan Strategic Fund.

9. Michigan Enterprise Zone Authority

All the statutory authority, powers, duties, functions and responsibilities, including the functions of budgeting, procurement, personnel and management related functions of the Michigan Enterprise Zone Authority created within the Department of Commerce under the Enterprise Zone Act, Act No. 224 of the Public Acts of 1985, as amended, being Section 125.2101 et seq. of the Michigan Compiled Laws, transferred by Executive Order 1994-14 to the Chief Executive Officer of the Michigan Jobs Commission, transferred by Executive Order 1994-26 to the Department of the Michigan Jobs Commission are hereby transferred to the Michigan Strategic Fund.

10. Neighborhood Enterprise Zones

All the statutory authority, powers, duties, functions and responsibilities, including the functions of budgeting, procurement, personnel and management related functions of the Michigan Enterprise Zone Authority under the Neighborhood Enterprise Zone Act, Act No. 147 of the Public Acts of 1992, as amended, being Section 207.771 et seq. of the Michigan Compiled Laws, transferred to the Chief Executive Officer of the Michigan Jobs Commission by Executive Order 1994-14, transferred to the Department of the Michigan Jobs Commission by Executive Order 1994-26 are hereby transferred to the Michigan Strategic Fund.

11. Michigan Urban Land Assembly Act

All the statutory authority, powers, duties, functions and responsibilities, including the functions of budgeting, procurement, personnel and management related functions of the Department of Commerce under the Michigan Urban Land Assembly Act, Act No. 171 of the Public Acts of 1981, being Section 125.1851 et seq. of the Michigan Compiled Laws, transferred to the Chief Executive Officer of the Michigan Jobs Commission by Executive Order 1994-14, transferred by Executive Order 1994-26 to the Department of the Michigan Jobs Commission are hereby transferred to the Michigan Strategic Fund.

12. Michigan Travel Commission

The Michigan Travel Commission, created pursuant to the Michigan Tourism Policy Act, Act No. 106 of the Public Acts of 1945, as amended, being Section 2.101 et seq. of the Michigan Compiled Laws, transferred from the Department of Commerce to the Department of the Michigan Jobs Commission by Executive Order 1994-26, is hereby transferred to the Michigan Strategic Fund as an advisory board to the president of the Michigan Strategic Fund.

13. Michigan Travel Bureau/ Travel Michigan

All the statutory authority, powers, duties, functions and responsibilities, including the functions of budgeting, procurement, personnel and management related functions of the Michigan Travel Bureau created pursuant to the Michigan Tourism Policy Act, Act No. 106 of the Public Acts of 1945, as amended, being Section 2.101 et seq. of the Michigan Compiled Laws, transferred from the Department of Commerce to the Department of the Michigan Jobs Commission by Executive Order 1994-26 and renamed Travel Michigan by Executive Order 1997-1, are hereby transferred to the Michigan Strategic Fund.

14. Office of the Michigan Business Ombudsman

All the statutory authority, powers, duties, functions and responsibilities, including the functions of budgeting, procurement, personnel and management related functions of the Office of the Michigan Business Ombudsman, created in the Department of Commerce by Executive Directive 1991-12, transferred to the Department of the Michigan Jobs Commission by Executive Order 1994-26, are hereby transferred to the Michigan Strategic Fund.

15. Office of the Small Business Clean Air Ombudsman

All the statutory authority, powers, duties, functions and responsibilities, including the functions of budgeting, procurement, personnel and management related functions of the Office of the Small Business Clean Air Ombudsman along with any related funds, created pursuant to the Natural Resources and Environmental Protection Act, Sections 5701 - 5708 of Act No. 451 of the Public Acts of 1994, being Sections 324.5701 - 324.5708 of the Michigan Compiled Laws, transferred from the Department of Commerce to the Department of the Michigan Jobs Commission by Executive Order 1995-2, are hereby transferred to the Michigan Strategic Fund.

16. Michigan Renaissance Zone Act

All the statutory authority, powers, duties, functions and responsibilities, including the functions of budgeting, procurement, personnel and management related functions of the Department of the Michigan Jobs Commission under the Michigan Renaissance Zone Act created pursuant to Act No. 376 of the Public Acts of 1996, being Section 125.2681 et seq. of the Michigan Compiled Laws, are hereby transferred to the Michigan Strategic Fund. The position on the Renaissance Zone Review Board designated for the Chief Executive Officer of the Department of the Michigan Jobs Commission is hereby transferred to the president of the Michigan Strategic Fund.

17. Michigan Business Incubation Act

All the statutory authority, powers, duties, functions and responsibilities, including the functions of budgeting, procurement, personnel and management related functions of the Department of Commerce under the Michigan Business Incubation Act, Act No. 198 of the Public Acts of 1984, as amended, being Section 125.1571 of the Michigan Compiled Laws, and transferred from the Department of Commerce to the Chief Executive Officer of the Michigan Jobs Commission by Executive Order 1996-2, are hereby transferred to the Michigan Strategic Fund.

18. Commercial Redevelopment Act

All the statutory authority, powers, duties, functions and responsibilities, including the functions of budgeting, procurement, personnel and management related functions of the Department of Commerce under the Commercial Redevelopment Act, Act No. 255 of the Public Acts of 1978, as amended, being Sections 207.651 et seq. of the Michigan Compiled Laws, transferred from the Department of Commerce to the Chief Executive Officer of the Michigan Jobs Commission by Executive Order 1996-2, are hereby transferred to the Michigan Strategic Fund.

19. Economic Development Corporations Act

All the statutory authority, powers, duties, functions and responsibilities, including the functions of

budgeting, procurement, personnel and management related functions, of the Department of Commerce under the Economic Development Corporations Act, Act No. 338 of the Public Acts of 1974, as amended, being Section 125.1601 et seq. of the Michigan Compiled Laws, transferred from the Department of Commerce to the Chief Executive Officer of the Michigan Jobs Commission by Executive Order 1996-2, are hereby transferred to the Michigan Strategic Fund.

20. Office of Film and Television Services

All the authority, powers, duties, functions and responsibilities, including the functions of budgeting, procurement, personnel and management related functions of the Office of Film and Television Services, created within the Department of Commerce by Executive Directive 1979-3, continued by Executive Order 1984-8 and transferred from the Department of Commerce to the Department of the Michigan Jobs Commission by Executive Order 1994-26, are hereby transferred to the Michigan Strategic Fund.

21. Economic Development Road Projects

a. All the statutory authority, powers, duties, functions and responsibilities of the State Transportation Commission to distribute grants and direct the office of economic development as to economic development road projects under Section 11(3)(a) of Act No. 231 of the Public Acts of 1987, as amended, being Section 247.911(3)(a) of the Michigan Compiled Laws, are hereby transferred to the Director of the Michigan Department of Transportation and to the President of the Michigan Strategic Fund, jointly.

b. All records, personnel, property and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available to the Michigan Department of Transportation for the functions assigned by this Order shall remain with the Michigan Department of Transportation.

c. All rules, contracts and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or repealed.

d. Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

22. Other Programs

All the statutory authority, powers, duties, functions and responsibilities, including budgeting, procurement, personnel and management related functions of the following programs are hereby transferred to the Michigan Strategic Fund:

a. The Michigan Training Incentive Fund, transferred to the Department of the Michigan Jobs Commission by Executive Order 1994-26;

b. The Minority, Women and Small Business Services units, created pursuant to Act No. 165 of 1975, being Section 125.1221 et seq., of the Michigan Compiled Laws and transferred to the Department of the Michigan Jobs Commission by Executive Order 1994-26;

c. The Capital Resources Group, created pursuant to the Michigan Strategic Fund Act, Act No. 270 of the Public Acts of 1984, being Section 125.2001 et seq. of the Michigan Compiled Laws, transferred to the Department of the Michigan Jobs Commission by Executive Order 1994-26;

d. The Office of Business and Education Coordination and the Sales Unit of the Development Services Division transferred from the Department of Commerce to the Department of the Michigan Jobs Commission by Executive Order 1994-26;

e. The K. I. Sawyer Conversion Authority created by Executive Order 1993-16 and transferred from the Department of Commerce to the Department of the Michigan Jobs Commission by Executive Order 1994-26; and

f. The Wurtsmith Conversion Authority created by Executive Order 1991-37 and transferred from the Department of Commerce to the Department of the Michigan Jobs Commission by Executive Order 1994-26.

B. All records, personnel, property and unexpended balances of appropriations, allocations, grants and other funds used, held, employed, available or to be made available to the Department of the Michigan Jobs Commission for the activities, powers, duties, functions and responsibilities transferred by this Order are hereby transferred to the Michigan Strategic Fund.

C. All rules, orders, contracts and agreements relating to the functions transferred to the Michigan Strategic Fund lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or repealed.

D. Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order.

IV. MICHIGAN ECONOMIC DEVELOPMENT CORPORATION

A. The Michigan Strategic Fund may enter into an interlocal agreement with one or more local public agencies pursuant to the Urban Cooperation Act of 1967, Act No. 7 of 1967, Ex. Sess., as amended, being

Section 124.501 et seq., of the Michigan Compiled Laws, to provide for a public body corporate, to be called the Michigan Economic Development Corporation (the "Corporation").

A purpose of the Corporation shall include the joint exercise of shared power, privilege or authority of the Michigan Strategic Fund and the local public agencies to perform successful, effective and efficient economic development programs and functions. Shared powers shall include the coordination of complimentary, applicable state and local economic development programs and functions.

Pursuant to the joint exercise of shared power, privilege or authority, the interlocal agreement may provide for the Corporation to solicit and to accept grants, donations or transfers of personnel, services, facilities, property, franchises or funds from the United States, the state of Michigan, any political subdivision, department or agency of the state of Michigan, corporations, agencies, organizations, associations or any other person, either public or private.

The interlocal agreement may provide that the Michigan Strategic Fund contribute any such personnel, services, facilities, property, franchises, powers, responsibilities or funds to the Corporation as permitted by law and as are necessary to carry out the purposes of this Executive Order, with the exception of all taxable and tax exempt bond issuance authority. Whenever Michigan Strategic Fund personnel, services, facilities, property, franchises or funds contributed to the Corporation require annual appropriation, any obligation of the Michigan Strategic Fund created pursuant to the interlocal agreement shall be likewise conditioned upon annual appropriations. The interlocal agreement shall provide that state civil service employees detailed to the Corporation shall continue in the state classified service and in the state benefit system including wages, pension, seniority, sick leave, vacation, health, welfare and other benefits.

B. All departments, boards, commissions or officers of the state or of any political subdivision thereof shall give the Michigan Economic Development Corporation, or to any member or representative thereof, any necessary assistance required by the Michigan Economic Development Corporation or any member or representative thereof, in the performance of the functions, duties and responsibilities of the Michigan Economic Development Corporation.

V. CREATION OF THE DEPARTMENT OF CAREER DEVELOPMENT

A. The Department of Career Development is hereby created. All the remaining authority, powers, duties, functions, responsibilities and personnel of the Department of the Michigan Jobs Commission are transferred to the Department of Career Development. This department shall be headed by a Director who shall be appointed by and serve at the pleasure of the Governor.

B. The following programs and functions are hereby transferred from the Department of the Michigan Jobs Commission to the Department of Career Development:

1. All the authority, powers, duties, functions and responsibilities of the Council of Career Preparation Standards, created by Executive Order 1997-15 and funded under the State School Aid Act of 1979, Section 67 of Act No. 94 of the Public Acts of 1979, as amended, being Section 388.1667 of the Michigan Compiled Laws, are hereby transferred by a Type II transfer to the Department of Career Development.

2. All the authority, powers, duties, functions and responsibilities of the Governor's Workforce Commission, created by Executive Order 1994-26, Section VII, are hereby transferred by a Type II transfer to the Department of Career Development. The position on the Governor's Workforce Commission designated for the Michigan Jobs Commission Chief Executive Officer is transferred to the president of the Michigan Strategic Fund. The position on the Governor's Workforce Commission designated for the Vice President for Workforce Development is transferred to the Director of the Department of Career Development.

3. All the authority, powers, duties, functions and responsibilities of the State Board of Education for the Michigan Rehabilitative Services, pursuant to the Rehabilitation Act, Act No. 232 of the Public Acts of 1964, as amended, being Section 395.81 et seq. of the Michigan Compiled Laws; Act No. 111 of the Public Acts of 1952, as amended, being Section 395.151 et seq. of the Michigan Compiled Laws; the Worker's Disability Compensation Act of 1969, Act No. 317 of the Public Acts of 1969, as amended, being Section 418.101 et seq., of the Michigan Compiled Laws, and the federal Rehabilitation Act of 1973, 29 USC 701 et seq., transferred to the Michigan Jobs Commission by Executive Order 1994-26, are hereby transferred by a Type III transfer to the Department of Career Development.

4. All the authority, powers, duties, functions and responsibilities of the Michigan Rehabilitation Advisory Council established within the Department of the Michigan Jobs Commission by Executive Order 1994-20 are hereby transferred by a Type II transfer to the Department of Career Development.

5. All the authority, powers, duties, functions and responsibilities of the Federal JOBS Program, Work First and Grant Diversion programs, transferred to the Department of the Michigan Jobs Commission by Executive Order 1994-26, are hereby transferred by a Type III transfer to the Department of Career Development.

6. All the authority, powers, duties, functions and responsibilities of the Michigan Community Service

Commission, pursuant to Act No. 219 of the Public Acts of 1994, being Section 408.221 et seq., of the Michigan Compiled Laws, are hereby transferred by a Type II transfer to the Department of Career Development.

7. All the authority, powers, duties, functions and responsibilities of the Governor's Office for Job Training, transferred to the Department of the Michigan Jobs Commission by Executive Order 1994-26, are hereby transferred by a Type III transfer to the Department of Career Development.

8. All the authority, powers, duties, functions and responsibilities of the Displaced Homemaker Program transferred to the Department of the Michigan Jobs Commission by Executive Order 1994-26, are hereby transferred by a Type III transfer to the Department of Career Development.

9. All the authority, powers, duties, functions and responsibilities of the Michigan Occupational Information Coordinating Committee, transferred to the Department of the Michigan Jobs Commission by Executive Order 1994-26, are hereby transferred by a Type III transfer to the Director of the Department of Career Development.

10. All the authority, powers, duties, functions and responsibilities, including the functions of budgeting, procurement and management-related functions of the Michigan Transition Initiative, transferred to the Department of the Michigan Jobs Commission by Executive Order 1994-26, are hereby transferred by a Type III transfer to the Department of Career Development.

11. All the authority, powers, duties, functions and responsibilities of the Michigan Occupational Information System transferred to the Michigan Jobs Commission by Executive Order 1994-26, are hereby transferred by a Type II transfer to the Department of Career Development.

12. All the authority, powers, duties, functions and responsibilities of the Department of Corrections Job Training Programs transferred to the Michigan Jobs Commission by Executive Order 1994-26, are hereby transferred by a Type III transfer to the Department of Career Development.

13. All the authority, powers, duties, functions and responsibilities of the Employment Service Agency not transferred to the Michigan Strategic Fund as described in III.A.6, established pursuant to the Michigan Employment Security Act, Act No. 1 of the Public Acts of 1936, Ex. Sess., as amended, being Section 421.1 et seq. of the Michigan Compiled Laws, as modified by Executive Order 1997-12 and Executive Order 1997-18, are hereby transferred by a Type I transfer to the Department of Career Development. Finance, information technology and other general administrative employees of the Employment Service Agency and their funding shall transfer from the Employment Service Agency to the Department of Career Development. The Department of the Michigan Jobs Commission Chief Executive Officer and the Employment Service Agency Director shall jointly determine the positions to be transferred.

14. Any other authority, powers, duties, functions and responsibilities, including the functions of budgeting, procurement and management not transferred to the Michigan Strategic Fund or the president of the Michigan Strategic Fund by this Order or by statute, are hereby transferred to the Department of Career Development.

C. All records, personnel, property, grants and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available to the Department of the Michigan Jobs Commission for the activities, powers, duties, functions and responsibilities transferred by Section V of this Order are hereby transferred to the Department of Career Development.

D. All rules, orders, contracts, grants and agreements relating to the functions transferred to the Department of Career Development lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or repealed.

E. Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order.

VI. Miscellaneous

A. The position on the Brownfield Redevelopment Board created by the Natural Resources and Environmental Protection Act, Act No. 451 of the Public Acts of 1994, at Section 324.20104a of the Michigan Compiled Laws, designated for the Chief Executive Officer of the Department of the Michigan Jobs Commission is hereby transferred to the president of the Michigan Strategic Fund.

B. The Michigan Jobs Commission Board, the Department of the Michigan Jobs Commission, and the Michigan Jobs Commission are hereby abolished as of the effective date of this Executive Order.

C. The Department of Management and Budget shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system for the remainder of this fiscal year.

D. The invalidity of any portion of this Order shall not affect the validity of the remainder thereof.

This Executive Order shall become effective Monday, April 5, 1999.

History: 1999, E.R.O. No. 1999-1, Eff. Apr. 5, 1999;—Am. 1999, E.R.O. No. 1999-2, Eff. May 11, 1999.

Compiler's note: Section III.A.21 of E.R.O. No. 1999-1, compiled at MCL 408.40, was rescinded by E.R.O. No. 1999-2, Eff. May 11, 1999, and replaced with Section III.A.21.a through Section III.A.21.d.

For creation of Michigan workforce investment board within Michigan department of career development, see E.R.O. No. 2002-4, compiled at MCL 408.101 of the Michigan Compiled Laws.

For transfer of powers and duties of department of career development, including any board, commission, council, or similar entity within the department of career development, to the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

EXECUTIVE REORGANIZATION ORDER
E.R.O. No. 1971-1

408.41 Office of economic opportunity; transfer.

WHEREAS, Executive Order 1965-7 established the Michigan Economic Opportunity Office within the Executive Office of the Governor; and

WHEREAS, it is recognized that in the interests of economy, efficiency, and good government, it is necessary to effectuate changes in the organization of the Executive branch of government.

THEREFORE, I, WILLIAM G. MILLIKEN, Governor of the State of Michigan, by virtue of the authority vested in me by Article V, Section 2, of the Constitution of 1963, do hereby order and direct that:

1. From and after February 1, 1971, the Michigan Economic Opportunity Office is hereby transferred from the Executive Office of the Governor to the Department of Labor.

2. All powers, functions, duties and responsibilities of the Office as previously set forth in Executive Order 1965-7 are transferred by a Type II transfer to the Department of Labor.

3. All records, property, personnel and unexpended balance of appropriations, allocations and other funds used, held, employed, available, or to be made available to the Office of Economic Opportunity are transferred to the Department of Labor.

History: 1971, E.R.O. No. 1971-1, Eff. Apr. 1, 1971.

EXECUTIVE REORGANIZATION ORDER
E.R.O. No. 1973-3

408.42 Transfer of Michigan manpower planning council to department of labor.

WHEREAS, Executive Order 1971-8 established the Michigan Manpower Planning Council within the Executive Office of the Governor, and;

WHEREAS, implementation of the Federal Emergency Employment Act has been assigned to the Manpower Planning Unit within the Executive Office of the Governor, and;

WHEREAS, the Cooperative Area Manpower Planning System has been developed in order to fulfill the state's requirements for statewide manpower planning, and;

WHEREAS, it is recognized that in the interests of economy, efficiency, and effectiveness of government, it is necessary to effectuate changes in the Executive Branch of state government.

THEREFORE, I, WILLIAM G. MILLIKEN, Governor of the State of Michigan, pursuant to Article V, Section 2, of the Constitution of the State of Michigan do hereby transfer the powers, duties, functions and responsibilities of the Michigan Manpower Planning Council, as set forth in Executive Order 1971-8, and the implementation of the Emergency Employment Act Program from the Executive Office of the Governor to the Department of Labor.

All records, personnel and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available to the Manpower Planning Council and for implementation of the Emergency Employment Act Program are transferred to the Department of Labor.

In fulfillment of the requirements of Article V, Section 2, of the Michigan Constitution, the provisions of this Order shall become effective July 1, 1973.

History: 1973, E.R.O. No. 1973-3, Eff. July 1, 1973.

EXECUTIVE REORGANIZATION ORDER
E.R.O. No. 1986-1

408.43 Transfer of governor's office for job training to department of labor.

WHEREAS, Article V, Section 2, of the Michigan Constitution of 1963 empowers to Governor to make changes in the organization of the Executive Branch or assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, job training is a vital tool assisting Michigan workers to obtain the skills required to gain and hold jobs in Michigan's changing economy; and

WHEREAS, a well-coordinated program of job training is required to reinforce our state's economic development programs and to increase employment opportunities for Michigan's citizens; and

WHEREAS, the resources available to support this effort are extremely limited and must be utilized as effectively and efficiently as possible;

NOW, therefore, I, James J. Blanchard, Governor of the State of Michigan, pursuant to the authority vested in me by the provisions of Article V, Section 2, of the Constitution of the State of Michigan of 1963, do hereby order:

1. The Governor's Office for Job Training, created by Executive Order 1983-13 and continued by Executive Order 1985-5, and its authority, powers, duties, functions, and responsibilities are hereby transferred from the Department of Management and Budget to the Department of Labor. The Office shall be headed by a Director appointed by and directly responsible to the Governor.

2. The Governor's Office for Job Training's existing functions and responsibilities shall be retained subsequent to the transfer under this Order, except: full responsibility for contract development, compliance monitoring, auditing, grievance review, federal reporting, and grant liaison with the United States Department of Labor which shall be the responsibility of the Bureau of Employment Training within the Department of Labor. The Office for Job Training shall retain responsibility for job training policy and program development, service provider selection and program oversight for Job Training Partnership Act Title I section 124 (Older Individuals) and Title III (Dislocated Workers).

3. Further, the Office of Industrial Training, including the Michigan Business and Industrial Training Program created pursuant to Act No. 48 of the Public Acts of 1982 and responsibilities conferred by the Employee Owned Corporations Act, Act No. 152 of the Public Acts of 1985, shall be consolidated into the Governor's Office for Job Training.

All records, property, personnel, and unexpended balances of appropriations, allocations and other funds used, held, employed, available, or to be made available, to any of the entities or for any of the functions transferred herein are also transferred with the entities and their functions, as described.

In fulfillment of the requirements of Article V, Section 2, of the Constitution of 1963, this Order shall become effective sixty (60) days after submission to the Legislature.

History: 1986, E.R.O. No. 1986-1, Eff. May 24, 1986.

EXECUTIVE REORGANIZATION ORDER
E.R.O. No. 1993-1

408.44 Rescinded. 1994, E.R.O. No. 1994-10, Eff. Feb. 27, 1995.

EXECUTIVE REORGANIZATION ORDER
E.R.O. No. 1993-2

408.45 Rescinded. 1994, E.R.O. No. 1994-10, Eff. Feb. 27, 1995.

EXECUTIVE REORGANIZATION ORDER
E.R.O. No. 1993-3

408.46 Rescinded. 1994, E.R.O. No. 1994-10, Eff. Feb. 27, 1995.

EXECUTIVE REORGANIZATION ORDER
E.R.O. No. 1994-8

408.47 Rescinded. 1994, E.R.O. No. 1994-10, Eff. Feb. 27, 1995.

EXECUTIVE REORGANIZATION ORDER
E.R.O. No. 1994-10

408.48 Transfer of powers and duties of Michigan jobs commission to new principal state department named the Michigan jobs commission; transfer of certain powers and duties of departments of education, social services, and commerce to new Michigan jobs commission; establish governor's workforce commission and Michigan jobs commission board.

WHEREAS, Article V, Section 1, of the Constitution of the State of Michigan of 1963 vests the executive power in the Governor; and

WHEREAS, Article V, Section 2, of the Constitution of the State of Michigan of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, Article V, Section 8, of the Constitution of the State of Michigan of 1963 provides that each principal department shall be under the supervision of the Governor, unless otherwise provided by the Constitution; and

WHEREAS, the Michigan Jobs Commission was created by Executive Order 1993-2 as a temporary agency; and

WHEREAS, the functions, duties and responsibilities assigned to the Michigan Jobs Commission can be more effectively carried out by the director of a new principal department; and

WHEREAS, it is necessary in the interests of efficient administration and effectiveness of government to effect changes in the organization of the Executive Branch of government.

NOW, THEREFORE, I, John Engler, Governor of the State of Michigan, pursuant to the powers vested in me by Article V, Section 1, Article V, Section 2, and Article V, Section 8 of the Constitution of the State of Michigan of 1963 and the laws of the State of Michigan, do hereby order the following:

I. DEFINITIONS

In this Order the following definitions shall apply except where the context clearly requires a different definition.

1. "Board" means the Michigan Jobs Commission Board established as a board by this Order.
2. "Michigan Jobs Commission" means the new principal department created by this Order.
3. "Chief Executive Officer" means that member of the Michigan Jobs Commission Board designated by the Governor as the president/chief executive officer of the Michigan Jobs Commission Board and Director of the Michigan Jobs Commission.
4. "Director" means the Chief Executive Officer of the Michigan Jobs Commission Board and Director of the Michigan Jobs Commission.
5. "Vice President for Economic Expansion" means that member of the Michigan Jobs Commission Board appointed under Part VI.B.1. to serve as Vice President for Economic Expansion and that member shall serve as Vice President for Economic Expansion at the pleasure of the Governor. The Vice President for Economic Expansion shall report to and be directly responsible to the Chief Executive Officer. The Vice President for Economic Expansion shall perform such duties and exercise such powers as the Chief Executive Officer may prescribe.
6. "Vice President for Workforce Development" means that member of the Michigan Jobs Commission Board appointed under Part VI.B.1. to serve as Vice President for Workforce Development and that member shall serve as Vice President for Workforce Development at the pleasure of the Governor. The Vice President for Workforce Development shall report to and be directly responsible to the Chief Executive Officer. The Vice President for Workforce Development shall perform such duties and exercise such powers as the Chief Executive Officer may prescribe.
7. "Member" means a member appointed by the Governor to the Michigan Jobs Commission Board established by this Order.
8. "Applicable federal human resource program" includes the programs authorized under:
 - a. The Job Training Partnership Act, 29 USC 1501 et seq.
 - b. The Carl D. Perkins Vocational and Applied Technology Education Act, 20 USC 2301 et seq.
 - c. The National and Community Service Act of 1990, 42 USC 12501 et seq.
 - d. The Adult Education Act, 20 USC 1201 et seq.
 - e. The Wagner-Peyser Act, 29 USC 49 et seq.
 - f. Part F of Subchapter IV of the Social Security Act, 42 USC 681 et seq.
 - g. The employment program established under Section 6(d)(4) of the Food Stamp Act of 1977, 7 USC

2015(d)(4).

9. "Governor's Workforce Commission" means the Governor's Workforce Commission established by this Order.

10. "Governor's Workforce Commission Member" means a member appointed by the Governor to the Governor's Workforce Commission established by this Order.

II. GENERAL

1. Consistent with Article V, Section 2, of the Constitution of the State of Michigan of 1963, which limits the number of principal departments to twenty (20), the Michigan Jobs Commission created pursuant to Executive Order 1993-2 is hereby transferred to a new principal state department, which shall be named the Michigan Jobs Commission.

2. All the statutory authority, powers, duties, functions, and responsibilities of the Michigan Jobs Commission created pursuant to Executive Order 1993-2, including the authority granted under Executive Orders 1993-2, 1993-3, 1993-4, 1993-5, 1993-9, 1993-20, 1994-14, 1994-20 and Act No. 219 of 1994, are hereby transferred to the principal department created by this Order by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, being Section 16.103 of the Michigan Compiled Laws.

3. Pursuant to Article V, Section 1, Article V, Section 2, and Article V, Section 8, of the Constitution of the State of Michigan of 1963, the power to appoint the Director of the Michigan Jobs Commission is hereby vested in the Governor.

4. The Director of the Michigan Jobs Commission shall provide executive direction and supervision for the implementation of the transfer. The functions transferred to the Michigan Jobs Commission by this Order, except the power to appoint the director, shall be administered under the direction and supervision of the Director of the Michigan Jobs Commission, and all prescribed functions of rule making, licensing, and registration, including the prescription of rules, regulations, standards, and adjudications shall be transferred to the Director of the Michigan Jobs Commission.

5. The director shall, in addition to the other duties and responsibilities given to the director herein or assigned or transferred to the director as head of the department by statute or executive order, be responsible for the oversight and supervision of employees of the department and for the operations of the department. The director shall also perform such other duties and exercise other powers as the Governor may prescribe.

6. The Director of the Michigan Jobs Commission shall establish an administrative unit, including budget, personnel, information systems, internal audit, procurement, legislative and other related administrative functions. The director shall develop agreements with the Directors of the Departments of Commerce, Labor, Education, Social Services, Corrections, Mental Health and Management and Budget to transfer to the Michigan Jobs Commission the necessary personnel, records, property, unexpended balances of appropriations, allocations and other funds used, held, employed, available, or to be made available to the departments for these activities. The agreements must be developed no later than the effective date of this Order and implemented within 60 days of the effective date of this Order.

7. Until such time as the Michigan Jobs Commission has a fully operational administrative unit, the Director of the Michigan Jobs Commission may request the assistance of the Department of Labor, the Department of Commerce, the Department of Education, the Department of Social Services, and the Department of Management and Budget with respect to personnel, budgeting, procurement, information systems and other management-related functions and such departments shall provide such assistance.

8. All records, personnel, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the Michigan Jobs Commission created pursuant to Executive Order 1993-2 are hereby transferred to the principal department created by this Order.

9. All rules, orders, contracts and agreements relating to the functions transferred to the principal department created by this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, or repealed.

10. Any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected by this Order.

III. DEPARTMENT OF COMMERCE

A. Community Development Block Grants

1. All the authority, powers, duties, functions and responsibilities, including the functions of budgeting, procurement and management-related functions, of the federal Community Development Block Grant program operated by the Department of Commerce pursuant to Title I of the Housing and Community Development Act of 1974, as amended, being 42 USC 5300 et seq., commonly known as the Michigan Community Development Block Grant Program, are hereby transferred to the Michigan Jobs Commission by

a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

2. The Director of the Michigan Jobs Commission shall administer the assigned functions in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

3. The Director of the Michigan Jobs Commission shall provide executive direction and supervision for the implementation of the transfer. The assigned functions shall be administered under the direction and supervision of the Director of the Michigan Jobs Commission and all prescribed functions of rule making, licensing and registration, including the prescription of rules, regulations, standards and adjudications shall be transferred to the Director of the Michigan Jobs Commission.

4. All records, personnel, property and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available to the Department of Commerce for the activities transferred by this Order are hereby transferred to the Michigan Jobs Commission.

5. The Director of the Michigan Jobs Commission and the Director of the Department of Commerce shall immediately initiate coordination to facilitate the transfer and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Department of Commerce.

6. All rules, orders, contracts and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or repealed.

7. Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

B. Michigan Strategic Fund Board

1. The Michigan Strategic Fund Board created pursuant to Act No. 270 of 1984, as amended, being Section 125.2001 et seq. of the Michigan Compiled Laws, is hereby transferred to the Michigan Jobs Commission by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

2. The Director of the Michigan Jobs Commission shall replace the Director of the Department of Commerce as a member of the Michigan Strategic Fund Board.

3. The Director of the Michigan Jobs Commission shall administer the assigned functions in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

4. The Director of the Michigan Jobs Commission shall provide executive direction and supervision for the implementation of the transfer. The assigned functions shall be administered under the direction and supervision of the Director of the Michigan Jobs Commission and all prescribed functions of rule making, licensing and registration, including the prescription of rules, regulations, standards and adjudications shall be transferred to the Director of the Michigan Jobs Commission.

5. All records, personnel, property and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available to the Department of Commerce, the Michigan Strategic Fund or the Michigan Strategic Fund Board for the activities transferred by this Order are hereby transferred to the Michigan Jobs Commission.

6. The Director of the Michigan Jobs Commission and the Director of the Department of Commerce shall immediately initiate coordination to facilitate the transfer and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Department of Commerce.

7. All rules, orders, contracts and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or repealed.

8. Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

C. Michigan Strategic Fund

1. All the authority, powers, duties, functions and responsibilities, including the functions of budgeting, procurement and management-related functions, of the Michigan Strategic Fund created pursuant to Act No. 270 of 1984, as amended, being Section 125.2001 et seq. of the Michigan Compiled Laws, are hereby transferred to the Michigan Jobs Commission by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

2. All the authority, powers, duties, functions and responsibilities of the Director of the Department of

Commerce with respect to the operations of the Michigan Strategic Fund, including the power of appointment, are hereby transferred to the Director of the Michigan Jobs Commission by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

3. The Director of the Michigan Jobs Commission shall administer the assigned functions in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

4. The Director of the Michigan Jobs Commission shall provide executive direction and supervision for the implementation of the transfer. The assigned functions shall be administered under the direction and supervision of the Director of the Michigan Jobs Commission and all prescribed functions of rule making, licensing and registration, including the prescription of rules, regulations, standards and adjudications shall be transferred to the Director of the Michigan Jobs Commission.

5. All records, personnel, property and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available to the Department of Commerce, the Michigan Strategic Fund or the Michigan Strategic Fund Board for the activities transferred by this Order are hereby transferred to the Michigan Jobs Commission.

6. The Director of the Michigan Jobs Commission and the Director of the Department of Commerce shall immediately initiate coordination to facilitate the transfer and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Department of Commerce.

7. All rules, orders, contracts and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or repealed.

8. Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

D. Michigan Travel Commission

1. The Michigan Travel Commission, created pursuant to Act No. 106 of 1945, as amended, being Section 2.101 et seq. of the Michigan Compiled Laws, is hereby transferred from the Department of Commerce to the Michigan Jobs Commission by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

2. The function performed by the Director of the Department of Commerce with respect to the appointment of the Travel Bureau Director pursuant to Section 2(5) of Act No. 106 of 1945, being Section 2.102(5) of the Michigan Compiled Laws, is hereby transferred to the Director of the Michigan Jobs Commission.

3. The Director of the Michigan Jobs Commission shall administer the assigned functions in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

4. The Director of the Michigan Jobs Commission shall provide executive direction and supervision for the implementation of the transfer. The assigned functions shall be administered under the direction and supervision of the Director of the Michigan Jobs Commission and all prescribed functions of rule making, licensing and registration, including the prescription of rules, regulations, standards and adjudications shall be transferred to the Director of the Michigan Jobs Commission.

5. All records, personnel, property and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available to the Department of Commerce, the Michigan Travel Commission or the Michigan Travel Bureau for the activities transferred by this Order are hereby transferred to the Michigan Jobs Commission.

6. The Director of the Michigan Jobs Commission, the Director of the Department of Commerce and the Director of the Michigan Travel Bureau shall immediately initiate coordination to facilitate the transfer and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Michigan Travel Bureau and/or the Department of Commerce.

7. All rules, orders, contracts and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or repealed.

8. Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

E. Michigan Travel Bureau

1. All the authority, powers, duties, functions and responsibilities, including the functions of budgeting,

procurement and management-related functions, of the Michigan Travel Bureau are hereby transferred from the Department of Commerce to the Michigan Jobs Commission by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

2. The Director of the Michigan Jobs Commission shall administer the assigned functions in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

3. The Director of the Michigan Jobs Commission shall provide executive direction and supervision for the implementation of the transfer. The assigned functions shall be administered under the direction and supervision of the Director of the Michigan Jobs Commission and all prescribed functions of rule making, licensing and registration, including the prescription of rules, regulations, standards and adjudications shall be transferred to the Director of the Michigan Jobs Commission.

4. All records, personnel, property and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available to the Department of Commerce or the Michigan Travel Bureau for the activities transferred by this Order are hereby transferred to the Michigan Jobs Commission.

5. The Director of the Michigan Jobs Commission, the Director of the Department of Commerce and the Director of the Michigan Travel Bureau shall immediately initiate coordination to facilitate the transfer and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Michigan Travel Bureau and/or the Department of Commerce.

6. All rules, orders, contracts and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or repealed.

7. Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

F.K.I. Sawyer Conversion Authority

1. All the authority, powers, duties, functions and responsibilities, including the functions of budgeting, procurement and management-related functions, of the K.I. Sawyer Conversion Authority, created pursuant to Executive Order 1993-16, are hereby transferred from the Department of Commerce to the Michigan Jobs Commission by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

2. The Director of the Michigan Jobs Commission shall administer the assigned functions in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

3. The Director of the Michigan Jobs Commission shall provide executive direction and supervision for the implementation of the transfer. The assigned functions shall be administered under the direction and supervision of the Director of the Michigan Jobs Commission and all prescribed functions of rule making, licensing and registration, including the prescription of rules, regulations, standards and adjudications shall be transferred to the Director of the Michigan Jobs Commission.

4. All records, personnel, property and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available to the K.I. Sawyer Conversion Authority or the Department of Commerce for the activities transferred by this Order are hereby transferred to the Michigan Jobs Commission.

5. The Director of the Michigan Jobs Commission and the Director of the Department of Commerce shall immediately initiate coordination to facilitate the transfer and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the K.I. Sawyer Conversion Authority and/or the Department of Commerce.

6. All rules, orders, contracts and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or repealed.

7. Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

G.Wurtsmith Conversion Authority

1. All the authority, powers, duties, functions and responsibilities, including the functions of budgeting, procurement and management-related functions of the Department of Commerce related to the Wurtsmith Conversion Authority created pursuant to Executive Order 1991-37, are hereby transferred from the

Department of Commerce to the Michigan Jobs Commission by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

2. The Director of the Michigan Jobs Commission shall administer the assigned functions in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

3. The Director of the Michigan Jobs Commission shall provide executive direction and supervision for the implementation of the transfer. The assigned functions shall be administered under the direction and supervision of the Director of the Michigan Jobs Commission and all prescribed functions of rule making, licensing and registration, including the prescription of rules, regulations, standards and adjudications shall be transferred to the Director of the Michigan Jobs Commission.

4. All records, personnel, property and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available to the Department of Commerce for the activities transferred by this Order are hereby transferred to the Michigan Jobs Commission.

5. The Director of the Michigan Jobs Commission and the Director of the Department of Commerce shall immediately initiate coordination to facilitate the transfer and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Department of Commerce.

6. All rules, orders, contracts and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or repealed.

7. Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

H. Office of the Michigan Business Ombudsman

1. All the authority, powers, duties, functions and responsibilities, including the functions of budgeting, procurement and management-related functions, of the Office of the Michigan Business Ombudsman in the Department of Commerce, created pursuant to Executive Directive 1991-12, are hereby transferred to the Michigan Jobs Commission by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

2. The Director of the Michigan Jobs Commission shall administer the assigned functions in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

3. The Director of the Michigan Jobs Commission shall provide executive direction and supervision for the implementation of the transfer. The assigned functions shall be administered under the direction and supervision of the Director of the Michigan Jobs Commission and all prescribed functions of rule making, licensing and registration, including the prescription of rules, regulations, standards and adjudications shall be transferred to the Director of the Michigan Jobs Commission.

4. All records, personnel, property and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available to the Department of Commerce or the Michigan Business Ombudsman for the activities transferred by this Order are hereby transferred to the Michigan Jobs Commission.

5. The Director of the Michigan Jobs Commission and the Director of the Department of Commerce shall immediately initiate coordination to facilitate the transfer and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Department of Commerce.

6. All rules, orders, contracts and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or repealed.

7. Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

8. Executive Directive 1991-12 and Executive Directive 1983-4 are hereby rescinded.

I. Other Programs

1. All the authority, powers, duties, functions and responsibilities, including the functions of budgeting, procurement and management-related functions, of the Department of Commerce for the Minority, Women and Small Business Services units, created pursuant to Act No. 165 of 1975, being Section 125.1221 et seq. of the Michigan Compiled Laws; the Capital Resources Group, created pursuant to Act No. 270 of 1984, being Section 125.2001 et seq. of the Michigan Compiled Laws; the Office of the Small Business Clean Air Ombudsman, created pursuant to Act No. 12 of 1993, being Section 336.121 et seq. of the Michigan

Compiled Laws; the Office of Business and Education Coordination; and the Sales Unit of the Development Services Division are hereby transferred to the Michigan Jobs Commission by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

2. The Director of the Department of Commerce having certified that the consolidation of the Office of Film and Television Services ordered pursuant to Executive Order 1991-13 has not occurred, all the authority, powers, duties, functions and responsibilities, including the functions of budgeting, procurement and management-related functions of the Office of Film and Television Services, created pursuant to Executive Directive 1979-3 and continued by Executive Order 1984-8, are hereby transferred to the Michigan Jobs Commission by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

3. The Director of the Michigan Jobs Commission shall administer the assigned functions in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

4. The Director of the Michigan Jobs Commission shall provide executive direction and supervision for the implementation of the transfer. The assigned functions shall be administered under the direction and supervision of the Michigan Jobs Commission and all prescribed functions of rule making, licensing and registration, including the prescription of rules, regulations, standards and adjudications shall be transferred to the Director of the Michigan Jobs Commission.

5. All records, personnel, property and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available to the Department of Commerce for the activities transferred by this Order are hereby transferred to the Michigan Jobs Commission.

6. The Director of the Michigan Jobs Commission and the Director of the Department of Commerce shall immediately initiate coordination to facilitate the transfer and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Department of Commerce.

7. All rules, orders, contracts and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or repealed.

8. Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

J. Michigan International Trade Authority Board

1. All the authority, powers, duties, functions and responsibilities, including the functions of budgeting, procurement and management-related functions, of the Michigan Export Development Authority Board, created pursuant to Act No. 157 of the Public Acts of 1986, as amended, being Section 447.151 et seq. of the Michigan Compiled Laws, are hereby transferred to the Michigan Jobs Commission by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws, and the board shall hereafter be named the Michigan International Trade Authority Board.

2. The Director of the Michigan Jobs Commission shall replace the Director of the Department of Commerce as a member of the Michigan International Trade Authority Board.

3. The Director of the Michigan Jobs Commission shall administer the assigned functions in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

4. The Director of the Michigan Jobs Commission shall provide executive direction and supervision for the implementation of the transfer. The assigned functions shall be administered under the direction and supervision of the Director of the Michigan Jobs Commission and all prescribed functions of rule making, licensing and registration, including the prescription of rules, regulations, standards and adjudications shall be transferred to the Director of the Michigan Jobs Commission.

5. All records, personnel, property and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available to the Department of Commerce, the Michigan International Trade Authority or the Michigan International Trade Authority Board for the activities transferred by this Order are hereby transferred to the Michigan Jobs Commission.

6. The Director of the Michigan Jobs Commission, the Director of the Department of Commerce and the Director of the Michigan International Trade Authority shall immediately initiate coordination to facilitate the transfer and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Michigan International Trade Authority and/or the Department of Commerce.

7. All rules, orders, contracts and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or repealed.

8. Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

K.Michigan International Trade Authority

1. All the authority, powers, duties, functions and responsibilities, including the functions of budgeting, procurement and management-related functions, of the Michigan International Trade Authority, created pursuant to Executive Order 1994-6, are hereby transferred to the Michigan Jobs Commission by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

2. The Director of the Michigan Jobs Commission shall administer the assigned functions in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

3. The Director of the Michigan Jobs Commission shall provide executive direction and supervision for the implementation of the transfer. The assigned functions shall be administered under the direction and supervision of the Director of the Michigan Jobs Commission and all prescribed functions of rule making, licensing and registration, including the prescription of rules, regulations, standards and adjudications shall be transferred to the Director of the Michigan Jobs Commission.

4. All records, personnel, property and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available to the Department of Commerce, the Michigan International Trade Authority or the Michigan International Trade Authority Board for the activities transferred by this Order are hereby transferred to the Michigan Jobs Commission.

5. The Director of the Michigan Jobs Commission, the Director of the Department of Commerce and the Director of the Michigan International Trade Authority shall immediately initiate coordination to facilitate the transfer and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Michigan International Trade Authority and/or the Department of Commerce.

6. All rules, orders, contracts and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or repealed.

7. Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

IV.DEPARTMENT OF EDUCATION

A.Michigan Transition Initiative

1. All the authority, powers, duties, functions and responsibilities, including the functions of budgeting, procurement and management-related functions, of the Michigan Transition Initiative in the Department of Education, created pursuant to Section 626(e) of part C of the Individuals with Disabilities in Education Act (IDEA) of 1990, P.L. 101-476, are hereby transferred to the Michigan Jobs Commission by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

2. The Director of the Michigan Jobs Commission shall administer the assigned functions in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

3. The Director of the Michigan Jobs Commission shall provide executive direction and supervision for the implementation of the transfer. The assigned functions shall be administered under the direction and supervision of the Director of the Michigan Jobs Commission and all prescribed functions of rule making, licensing and registration, including the prescription of rules, regulations, standards and adjudications shall be transferred to the Director of the Michigan Jobs Commission.

4. All records, personnel, property and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available to the Department of Education for the activities transferred by this Order are hereby transferred to the Michigan Jobs Commission.

5. The Director of the Michigan Jobs Commission and the Superintendent of Public Instruction shall immediately initiate coordination to facilitate the transfer and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Department of Education.

6. All rules, orders, contracts and agreements relating to the assigned functions lawfully adopted prior to

the effective date of this Order shall continue to be effective until revised, amended or repealed.

7. Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

V. DEPARTMENT OF SOCIAL SERVICES

Federal JOBS Program and Grant Diversion

1. All the authority, powers, duties, functions and responsibilities, including the functions of budgeting, procurement and management-related functions, to develop policies and procedures for the Work First and Grant Diversion programs in the Department of Social Services, created pursuant to Title IV of Part F of the Social Security Act, being 42 USC 681 et seq., and to implement those policies and procedures, are hereby transferred to the Michigan Jobs Commission by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws. The Director of the Department of Social Services shall retain the authority to approve the policies the Michigan Jobs Commission develops pursuant to this Order. The Directors of the Michigan Jobs Commission and the Department of Social Services shall, before the effective date of this Order, develop an interdepartmental agreement to effect the transfer, which shall provide that the employees who have been detailed from the Department of Social Services to the Michigan Jobs Commission to administer the Work First program shall become employees of the Michigan Jobs Commission.

2. The Director of the Michigan Jobs Commission shall administer the assigned functions in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

3. The Director of the Michigan Jobs Commission shall provide executive direction and supervision for the implementation of the transfer.

4. All records, personnel, property and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available to the Department of Social Services for the activities transferred by this Order are hereby transferred to the Michigan Jobs Commission, subject to the interdepartmental agreement referenced in Section V.1. of this Order.

5. The Director of the Michigan Jobs Commission and the Director of the Department of Social Services shall immediately initiate coordination to facilitate the transfer and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Department of Social Services, subject to the interdepartmental agreement referenced in Section V.1. of this Order.

6. All rules, orders, contracts and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or repealed.

7. Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order, subject to the interdepartmental agreement.

VI. THE MICHIGAN JOBS COMMISSION BOARD

A. Establishment

Board. The Michigan Jobs Commission Board is established as an advisory board by this Order to advise the Governor and Chief Executive Officer/Director of the Michigan Jobs Commission on matters regarding economic and workforce development policy.

B. Members of the Board

1. Total Membership and Terms. The Board shall have up to twenty-five (25) voting members who shall be appointed by the Governor and such members shall serve as members at the pleasure of the Governor. Of these members, one (1) shall be the chief executive officer, one (1) shall be the Vice President for Economic Expansion, and one (1) shall be the Vice President for Workforce Development. The Chief Executive Officer, the Vice President for Economic Expansion and the Vice President for Workforce Development shall be or become full-time employees of the State of Michigan.

2. Department Heads. The Directors of the Department of Social Services, the Department of Labor, the Department of Commerce, the Department of Natural Resources, the Department of Agriculture, the Department of Transportation, the Department of Treasury and the Superintendent of Public Instruction shall be ex officio, non-voting members of the Board.

C. Operations of the Board

1. Chairperson. The Governor or his designee shall serve as chairperson of the Board at the pleasure of the Governor.

2. Bylaws. The Board may promulgate bylaws, not inconsistent with law and with this Order, governing its organization and procedure.

3. Quorum, Voting. A majority of the serving, voting members constitutes a quorum for the transaction of business at a meeting, notwithstanding the existence of one (1) or more vacancies. Voting upon actions taken by the Board shall be conducted by a majority vote of the members present in person at a meeting of the Board or present by use of amplified telephonic equipment or by proxy. The Board shall meet at the call of the chief executive officer and as may be provided in the bylaws of the Board. Meetings of the Board may be held anywhere within the State of Michigan.

4. Conflicts of Interest. Members and employees of the Board are subject to Act No. 317 of the Public Acts of 1968, being Section 15.321 et seq. of the Michigan Compiled Laws, or Act No. 318 of the Public Act of 1968, being Section 15.301 et seq. of the Michigan Compiled Laws, as appropriate. Employees are also subject to applicable Civil Service Commission rules and procedures concerning conflicts of interest.

D.Compensation

1. Members of the Board. Members of the Board, not including the Chief Executive Officer, the Vice President for Economic Expansion and the Vice President for Workforce Development, shall serve without compensation for their membership on the Board.

2. Reimbursement. Members of the Board may receive reimbursement for necessary travel and expenses according to relevant procedures of the Civil Service Commission and the Department of Management and Budget.

VII.GOVERNOR'S WORKFORCE COMMISSION

A.Establishment

The Governor's Workforce Commission is established by this Order as an advisory body to advise the Governor and Chief Executive Officer/Director of the Michigan Jobs Commission on matters regarding workforce development. All the authority, powers, duties, functions and responsibilities of the Governor's Workforce Commission created under Executive Order 1993-3 are hereby transferred to the new Governor's Workforce Commission created by this Order.

B.Members of the Governor's Workforce Commission

1. Total Membership and Terms. The Governor's Workforce Commission shall have twenty (20) members who shall serve for a term of two (2) years.

2. State Government Representatives. Five (5) members of the Governor's Workforce Commission shall be appointed by the Governor, including the Director of the Department of Social Services, the Director of the Michigan Jobs Commission, the Director of the Department of Labor, Vice President for Workforce Development and the Superintendent of Public Instruction. These members shall serve at the pleasure of the Governor, subject to redesignation by the Governor.

3. Private Sector. Four (4) members of the Governor's Workforce Commission shall be appointed by the Governor to represent business and industry.

4. Education. Three (3) members of the Governor's Workforce Commission shall be appointed by the Governor to represent education and shall include representatives of each of the following: local public education, post-secondary institutions and secondary or post-secondary vocational educational institutions.

5. Labor. Three (3) members of the Governor's Workforce Commission shall be appointed by the Governor to represent labor and shall be selected from among individuals nominated by recognized state labor federations.

6. Community-Based Organizations. One (1) member of the Governor's Workforce Commission shall be appointed by the Governor to represent community-based organizations.

7. Other. Four (4) other members of the Governor's Workforce Commission shall be appointed by the Governor and may include representatives of local welfare agencies, public housing agencies, units of local government or consortia of such units appointed from nominations made by the chief elected officials of such units or consortia, state or local programs that receive funding from an applicable Federal human resource program that the Governor determines to have a direct interest in the utilization of human resources within the State of Michigan and individuals with special knowledge and qualifications with respect to special education and career development needs of hard-to-serve individuals.

C.Operations of the Governor's Workforce Commission

1. Chairperson. The Governor shall designate one (1) member of the Governor's Workforce Commission to serve as its chairperson and that member shall serve as chairperson at the pleasure of the Governor.

2. Bylaws. The Governor's Workforce Commission may promulgate bylaws, not inconsistent with law and with this Order, governing its organization and procedure.

3. Quorum, Voting. A majority of the serving members constitutes a quorum for the transaction of business

at a meeting, notwithstanding the existence of one (1) or more vacancies. Voting upon actions taken by the Governor's Workforce Commission shall be conducted by a majority vote of the members present in person at a meeting of the Governor's Workforce Commission or present by use of amplified telephonic equipment. The Governor's Workforce Commission shall meet at the call of the chairperson and as may be provided in the bylaws of the Governor's Workforce Commission. Meetings of the Governor's Workforce Commission may be held anywhere within the State of Michigan.

4. Audits. The Auditor General or a certified public accountant appointed by the Auditor General may annually conduct and remit to the Governor and the Legislature an audit of the Governor's Workforce Commission and, in the conduct of the audit, shall have access to all records of the Commission at any time.

D.Compensation

1. Members of the Governor's Workforce Commission. Members of the Governor's Workforce Commission, not including the Chief Executive Officer and the Vice President for Workforce Development, shall serve without compensation for their membership on the Governor's Workforce Commission.

2. Reimbursement. Members of the Governor's Workforce Commission may receive reimbursement for necessary travel and expenses according to relevant procedures of the Civil Service Commission and the Department of Management and Budget.

VIII.MISCELLANEOUS

A.Validity

The invalidity of any portion of this Order shall not affect the validity of the remainder thereof.

B.Inquiries, Studies, Investigations, Hearings, Comments

The Michigan Jobs Commission, the Michigan Jobs Commission Board and the Governor's Workforce Commission may, as appropriate, make inquiries, studies and investigations, hold hearings and receive comments from the public.

C.Cooperation of Agencies

All departments, boards, commissions or officers of the state or of any political subdivision thereof shall give to the Michigan Jobs Commission, or to any member or representative thereof, any necessary assistance required by the Department, or any member or representative thereof, in the performance of the duties of the Michigan Jobs Commission so far as is compatible with its, his or her duties; free access shall also be given to any books, records or documents in its, his or her custody, relating to matters within the scope of the inquiry, study or investigation of the Michigan Jobs Commission.

D.Contractors

The director may hire or retain such contractors, sub-contractors, advisors, consultants and agents as the director may deem advisable and necessary, in accordance with the relevant statutes, rules and procedures of the Civil Service Commission and the Department of Management and Budget, and may make and enter into contracts necessary or incidental to the exercise of the powers of and the performance of the duties of the Michigan Jobs Commission and the director.

E.Grants and Donations

The Michigan Jobs Commission may accept grants of funds and donations of funds, property, labor or other things of value from any department or agency of the State of Michigan and the United States and from any other public or private agency or person.

F.Pilot Programs

The director shall have the authority to and may operate such pilot or demonstration programs as the director determines to be reasonable and necessary.

Executive Order Nos. 1984-8, 1993-3, 1993-4, 1993-5, 1993-9, 1993-20, 1993-24 and 1994-14 are hereby rescinded.

In fulfillment of the requirement of Article V, Section 2, of the Constitution of the State of Michigan of 1963, the provisions of this Executive Order shall become effective 60 days after filing.

History: 1994, E.R.O. No. 1994-10, Eff. Feb. 27, 1995.

Compiler's note: Sections III.B and III.C of E.R.O. No. 1994-10, compiled at MCL 408.48, were rescinded by E.R.O. No. 1995-4, Eff. May 15, 1995.

For transfer of authority, powers, duties, functions, and responsibilities established under the Michigan economic and social opportunity act and transferred by Executive Order 1993-4 from the department of labor to the Michigan jobs commission and continued by Executive Order 1994-26 within the Michigan jobs commission to the department of social services, see E.R.O. No. 1995-1, compiled at MCL 408.49 of the Michigan Compiled Laws.

For transfer of authority, powers, duties, functions, and responsibilities established under the community services block grant program and transferred by Executive Order 1993-4 from the department of labor to the Michigan jobs commission and continued by Executive Order 1994-26 within the Michigan jobs commission to the department of social services, see E.R.O. No. 1995-1, compiled at MCL 408.49 of the Michigan Compiled Laws.

For transfer of authority, powers, duties, functions, and responsibilities established under the weatherization assistance for low

income persons program and transferred by Executive Order 1993-4 from the department of labor to the Michigan jobs commission and continued by Executive Order 1994-26 within the Michigan jobs commission to the department of social services, see E.R.O. No. 1995-1, compiled at MCL 408.49 of the Michigan Compiled Laws.

For creation of Michigan workforce investment board within Michigan department of career development, see E.R.O. No. 2002-4, compiled at MCL 408.101 of the Michigan Compiled Laws.

For transfer of powers and duties of department of career development, including any board, commission, council, or similar entity within the department of career development, to the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

EXECUTIVE REORGANIZATION ORDER
E.R.O. No. 1995-1

408.49 Transfer of powers and duties of office of the small business clean air ombudsman from the department of commerce to the Michigan jobs commission by type II transfer; transfer of powers and duties of state treasurer relative to granting of exclusions from state education tax to the chief executive officer of the Michigan jobs commission by a type II transfer; transfer of powers and duties established under the Michigan economic and social opportunity act and established under the weatherization assistance for low income persons program from the Michigan jobs commission to the department of social services by type II transfer.

WHEREAS, Article V, Section 2, of the Constitution of the State of Michigan of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, it is necessary in the interests of efficient administration and effectiveness of government to effect changes in the organization of the Executive Branch of government.

NOW, THEREFORE, I, John Engler, Governor of the State of Michigan, pursuant to the powers vested in me by the Constitution of the State of Michigan of 1963 and the laws of the State of Michigan, do hereby order the following:

I.OFFICE OF THE SMALL BUSINESS CLEAN AIR OMBUDSMAN

1. All the authority, powers, duties, functions and responsibilities, including the functions of budgeting, procurement and management-related functions, of the Office of the Small Business Clean Air Ombudsman, created pursuant to Sections 5701-5708 of Act No. 451 of 1994, are hereby transferred from the Department of Commerce to the Michigan Jobs Commission by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

2. The Chief Executive Officer of the Michigan Jobs Commission shall administer the assigned functions in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

3. The Chief Executive Officer of the Michigan Jobs Commission shall provide executive direction and supervision for the implementation of the transfer. The assigned functions shall be administered under the direction and supervision of the Chief Executive Officer of the Michigan Jobs Commission and all prescribed functions of rule-making, licensing and registration, including the prescription of rules, regulations, standards and adjudications, shall be transferred to the Chief Executive Officer of the Michigan Jobs Commission.

4. All records, personnel, property and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available to the Department of Commerce for the activities transferred by this Order are hereby transferred to the Michigan Jobs Commission.

5. The Chief Executive Officer of the Michigan Jobs Commission and the Director of the Department of Commerce shall immediately initiate coordination to facilitate the transfer and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Department of Commerce.

6. All rules, orders, contracts and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or repealed.

7. Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

II.STATE EDUCATION TAX

1. All the authority, powers, duties, functions and responsibilities of the State Treasurer to grant exclusions from the State Education Tax under Section 14a of Act No. 198 of Public Acts of 1974, being Section 207.564a of the Michigan Compiled Laws, are hereby transferred to the Chief Executive Officer of the Michigan Jobs Commission by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

2. The Chief Executive Officer of the Michigan Jobs Commission shall administer the assigned functions in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

3. The Chief Executive Officer of the Michigan Jobs Commission shall provide executive direction and supervision for the implementation of the transfer. The assigned functions shall be administered under the

direction and supervision of the Chief Executive Officer of the Michigan Jobs Commission and all prescribed functions of rule-making, licensing and registration, including the prescription of rules, regulations, standards and adjudications, shall be transferred to the Chief Executive Officer of the Michigan Jobs Commission.

4. All records, personnel, property and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available to the Department of Treasury for the activities transferred by this Order are hereby transferred to the Michigan Jobs Commission.

5. The Chief Executive Officer of the Michigan Jobs Commission and the State Treasurer shall immediately initiate coordination to facilitate the transfer and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Department of Treasury.

6. All rules, orders, contracts and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or repealed.

7. Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

III. DEPARTMENT OF SOCIAL SERVICES

A. Michigan Economic and Social Opportunity Act

1. All the authority, powers, duties, functions and responsibilities established under the Michigan Economic and Social Opportunity Act, Act No. 230 of the Public Acts of 1981, being Section 400.1101 et seq. of the Michigan Compiled Laws, and transferred by Executive Order 1993-4 from the Department of Labor to the Michigan Jobs Commission and continued by Executive Order 1994-26 within the Michigan Jobs Commission, are hereby transferred to the Department of Social Services by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

2. The Director of the Department of Social Services shall administer the assigned functions in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

3. The Director of the Department of Social Services shall provide executive direction and supervision for the implementation of the transfer. The assigned functions shall be administered under the direction and supervision of the Director of the Department of Social Services and all prescribed functions of rule-making, licensing and registration, including the prescription of rules, regulations, standards and adjudications, shall be transferred to the Director of the Department of Social Services.

4. All records, personnel, property and unexpended balances of appropriations, allocations, and other funds used, held, employed, available or to be made available to the Michigan Jobs Commission for the activities transferred by this Order are hereby transferred to the Department of Social Services.

5. The Director of the Department of Social Services and the Chief Executive Officer of the Michigan Jobs Commission shall immediately initiate coordination to facilitate the transfer and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Michigan Jobs Commission.

6. All rules, orders, contracts and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, or repealed.

7. Any suit, action or other proceeding lawfully commenced by, against, or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected by this Order.

B. Community Service Block Grant

1. All the authority, powers, duties, functions and responsibilities established under the Community Services Block Grant program pursuant to 42 U.S.C. 9901 et seq., and transferred by Executive Order 1993-4 from the Department of Labor to the Michigan Jobs Commission and continued by Executive Order 1994-26 within the Michigan Jobs Commission, are hereby transferred to the Department of Social Services by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

2. The Director of the Department of Social Services shall administer the assigned functions in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

3. The Director of the Department of Social Services shall provide executive direction and supervision for the implementation of the transfer. The assigned functions shall be administered under the direction and supervision of the Director of the Department of Social Services and all prescribed functions of rule-making,

licensing and registration, including the prescription of rules, regulations, standards and adjudications, shall be transferred to the Director of the Department of Social Services.

4. All records, personnel, property and unexpended balances of appropriations, allocations, and other funds used, held, employed, available or to be made available to the Michigan Jobs Commission for the activities transferred by this Order are hereby transferred to the Department of Social Services.

5. The Director of the Department of Social Services and the Chief Executive Officer of the Michigan Jobs Commission shall immediately initiate coordination to facilitate the transfer and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Michigan Jobs Commission.

6. All rules, orders, contracts and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, or repealed.

7. Any suit, action or other proceeding lawfully commenced by, against, or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected by this Order.

C. Weatherization Assistance for Low Income Persons

1. All the authority, powers, duties, functions and responsibilities established under the Weatherization Assistance for Low Income Persons program pursuant to 42 U.S.C. 6861 et seq., and transferred by Executive Order 1993-4 from the Department of Labor to the Michigan Jobs Commission and continued by Executive Order 1994-26 within the Michigan Jobs Commission, are hereby transferred to the Department of Social Services by a Type II transfer, as defined by Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

2. The Director of the Department of Social Services shall administer the assigned functions in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.

3. The Director of the Department of Social Services shall provide executive direction and supervision for the implementation of the transfer. The assigned functions shall be administered under the direction and supervision of the Director of the Department of Social Services and all prescribed functions of rule-making, licensing and registration, including the prescription of rules, regulations, standards and adjudications, shall be transferred to the Director of the Department of Social Services.

4. All records, personnel, property and unexpended balances of appropriations, allocations, and other funds used, held, employed, available or to be made available to the Michigan Jobs Commission for the activities transferred by this Order are hereby transferred to the Department of Social Services.

5. The Director of the Department of Social Services and the Chief Executive Officer of the Michigan Jobs Commission shall immediately initiate coordination to facilitate the transfer and develop a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations to be resolved by the Michigan Jobs Commission.

6. All rules, orders, contracts and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, or repealed.

7. Any suit, action or other proceeding lawfully commenced by, against, or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected by this Order.

In fulfillment of the requirement of Article V, Section 2, of the Constitution of the State of Michigan of 1963, the provisions of this Executive Order shall become effective 60 days after the filing of this Order.

History: 1995, E.R.O. No. 1995-1, Eff. Mar. 28, 1995.

EXECUTIVE REORGANIZATION ORDER
E.R.O. No. 1995-4

408.50 Transfer of powers and duties of the Michigan strategic fund from the director of the Michigan jobs commission to the Michigan strategic fund housed within the Michigan jobs commission; rescission of sections III.B and III.C of E.R.O. No. 1994-10.

WHEREAS, Article V, Section 2, of the Constitution of the State of Michigan of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for efficient administration; and

WHEREAS, it is necessary in the interests of efficient administration and effectiveness of government to effect changes in the organization of the Executive Branch of government.

NOW, THEREFORE, I, John Engler, Governor of the State of Michigan, pursuant to the powers vested in me by the Constitution of the State of Michigan of 1963 and the laws of the State of Michigan, do hereby order the following:

1. Sections III.B and III.C of Executive Order 1994-26 are hereby rescinded.
 2. All the statutory authority, powers, duties, functions and responsibilities, with the exception of those functions set forth in paragraph 5 of this Order, of the Michigan Strategic Fund created pursuant to Act No. 270 of 1984, as amended, being Section 125.2001 et seq. of the Michigan Compiled Laws, which powers currently reside with the Director of the Michigan Jobs Commission pursuant to Executive Order 1994-26, are hereby assigned to the Michigan Strategic Fund, which shall be housed within the Michigan Jobs Commission. The fund shall exercise, with the exception of those functions set forth in paragraph 5 of this Order, all of its statutory and otherwise legally prescribed authority, powers, duties and responsibilities independently of the Director of the Michigan Jobs Commission. In addition, this assignment includes, but is not limited to, bond, note, loan, grant, reserve and trust funds, subject to any agreement with note and bond holders, borrowers, grant recipients or contract holders.
 3. The Director of the Michigan Jobs Commission shall replace the Director of the Department of Commerce as a member of the Michigan Strategic Fund Board.
 4. The Director of the Michigan Jobs Commission shall administer the functions described in paragraph 5 in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities prescribed by this Order.
 5. The Director of the Michigan Jobs Commission shall provide executive direction and supervision for the implementation of this assignment. All administrative functions, including budgeting, procurement and related management functions of the fund, shall be performed under the direction and supervision of the Director of the Michigan Jobs Commission. The Michigan Jobs Commission shall function as the appointing authority for the civil service employees of the fund.
 6. All records, personnel, property and unexpended balances of appropriations, allocations and other funds used, held, employed, available or to be made available to the Department of Commerce for the functions assigned by this Order are hereby transferred to the Michigan Jobs Commission.
 7. All rules, orders, contracts and agreements relating to the assigned functions lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended or repealed.
 8. Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.
- In fulfillment of the requirement of Article V, Section 2, of the Constitution of the State of Michigan of 1963, the provisions of this Executive Order shall become effective 60 days after filing, or on such earlier date that a resolution of the legislature declining its right under Article V, Section 2 to disapprove this Order has been approved by both houses of the legislature by record roll call vote.

History: 1995, E.R.O. No. 1995-4, Eff. May 15, 1995.

DEPARTMENT OF LABOR
Act 285 of 1909

408.51-408.94 Repealed. 1964, Act 256, Eff. Aug. 28, 1964;—1967, Act 187, Eff. Nov. 2, 1967;—1967, Act 282, Imd. Eff. Aug. 1, 1967;—1971, Act 219, Imd. Eff. Dec. 30, 1971;—1974, Act 154, Eff. Jan. 1, 1975.

EXECUTIVE REORGANIZATION ORDER
E.R.O. No. 2002-4

408.101 Creation of Michigan workforce investment board within Michigan department of career development as type II entity.

WHEREAS, Article V, Section 1 of the Constitution of the state of Michigan of 1963 vests the executive power in the Governor; and

WHEREAS, Article V, Section 2, of the Constitution of the state of Michigan of 1963 empowers the Governor to make changes in the organization of the Executive Branch or in the assignment of functions among its units which he considers necessary for effective administration; and

WHEREAS, the current Governor's Workforce Commission was established by Executive Order 1994-26, being Section 408.48 of the Michigan Compiled Laws; to advise the Governor and the then Chief Executive Officer of the Michigan Jobs Commission on matters regarding workforce development with all the authority, powers, duties, functions, and responsibilities of the Governor's Workforce Commission created under Executive Order 1993-3; and

WHEREAS, Executive Order 1999-1, being Section 408.40 of the Michigan Compiled Laws; transferred all of the authority, powers, duties, functions and responsibilities of the Governor's Workforce Commission to the Department of Career Development by a Type II transfer as defined in Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws; and

WHEREAS, the federal Workforce Investment Act of 1998, 29 USC 2801 et seq., was enacted "to provide workforce investment activities, through statewide and local workforce investment systems, that increase the employment, retention, and earnings of participants, and increase occupational skill attainment by participants, and, as a result, improve the quality of the workforce, reduce welfare dependency, and enhance the productivity and competitiveness of the Nation" (29 USC 2811); and

WHEREAS, as a condition of receiving federal funds, the Workforce Investment Act of 1998 requires each state to establish a state workforce investment board or designate an alternative entity for carrying out duties related to statewide workforce investment activities (29 USC 2821); and

WHEREAS, prior to this Order, the Governor's Workforce Commission served as the alternative entity required under Section 111 of the Workforce Investment Act of 1998 (29 USC 2821); and

WHEREAS, changes in the structure of the Governor's Workforce Commission are needed to reflect the current organization of state government; and

WHEREAS, federal law requires the state to adopt a prescribed state workforce investment board model in order to effect these changes; and

WHEREAS, the federally prescribed state workforce investment board model dictates the number of and types of members of the state workforce investment board; and

WHEREAS, it is necessary to effect changes in the organization of the Executive Branch of government.

NOW, THEREFORE, I, John Engler, Governor of the state of Michigan, pursuant to the powers vested in me by the Constitution of the state of Michigan of 1963 and the laws of the state of Michigan, do hereby order the following:

I. DEFINITIONS

As used herein:

A. "Board" means the Michigan Workforce Investment Board established by this Executive Order.

B. "Department of Career Development" means the principal department of state government created by Executive Order 1999-1, being Section 408.40 of the Michigan Compiled Laws, or any act of the legislature enacted subsequent to the issuance of this order.

C. "Department of Community Health" means the principal department of state government created by Executive Order 1996-1, being Section 330.3101 of the Michigan Compiled Laws.

D. "Department of Consumer and Industry Services" means the principal department of state government created by Executive Order 1996-2, being Section 445.2001 of the Michigan Compiled Laws.

E. "Family Independence Agency" means the principal department of state government created by Act No. 280 of the Public Acts of 1939, being Section 400.1 of the Michigan Compiled Laws.

F. "Governor's Workforce Commission" means the entity established by Executive Order 1994-26, being Section 408.48 of the Michigan Compiled Laws.

G. "Local units of government" means counties, townships, cities, villages or federally-recognized Indian tribes.

H. "Member" means a member of the Board appointed by the Governor, the Speaker of the House, or the Senate Majority Leader, as required by federal statute and regulation. "Member" also means the Governor and

other state officials listed in Section II.C.4.h. of this order who also serve as board members as required by federal statute and regulation.

I. "One-Stop Partner" means the lead state agency with responsibility for the following programs and activities described in Section 121(b) of the federal Workforce Investment Act of 1998 (29 USC 2841(b)) and any federal regulations issued pursuant to the Act. Where no state agency has responsibility for such a program or service, a one-stop partner means an entity in the state with expertise relating to such a program. Those programs and activities include:

1. Programs authorized under Title I of the federal Workforce Investment Act of 1998, being 29 USC 2801 et seq., which provide the framework for state and local workforce investment systems and funding streams for services to youths, adults and dislocated workers.

2. Programs authorized under the Wagner-Peyser Act, 29 USC 49 et seq., which establish and maintain a national system of public employment offices, for which the Department of Career Development is the lead state agency.

3. Programs authorized under the Adult Education and Family Literacy Act, 20 USC 9201 et seq., which establish partnerships among the federal government, states and localities to provide adult education and literacy services, for which the Department of Career Development is the lead state agency.

4. Programs authorized under Title I of the Rehabilitation Act of 1973, 29 USC 720 et seq., which assist states in operating statewide comprehensive programs of vocational rehabilitation, for which the Department of Career Development is the lead state agency.

5. Programs authorized under section 403(a)(5) of the Social Security Act, 42 USC 603(a)(5), which establish block grants to states for temporary assistance for needy families, for which the Department of Career Development is the lead state agency.

6. Programs authorized under Title V of the Older Americans Act of 1965, 42 USC 3056 et seq., which promote useful part-time opportunities in community service activities for unemployed low-income persons age 55 or older in order to foster economic self-sufficiency, for which the Department of Community Health is the lead state agency.

7. Programs authorized under the Carl D. Perkins Vocational and Applied Technology Education Act, 20 USC 2301 et seq., which develop the academic, vocational and technical skills of secondary students and post-secondary students enrolled in vocational and technical education programs, for which the Department of Career Development is the lead state agency.

8. Programs authorized under chapter 2 of Title II of the Trade Act of 1974, 19 USC 2271 et seq., which assist and retrain workers unemployed as a result of foreign competition, for which the Department of Career Development is the lead state agency.

9. Activities authorized under Chapter 41 of Title 38 of the United States Code, 38 USC 4100 et seq., which provide job counseling, training and placement service for veterans, for which the Department of Career Development is the lead state agency.

10. Programs authorized under the Community Services Block Grant Act, 42 USC 9901 et seq., which provide assistance to states and local communities, community action agencies and other neighborhood-based organizations, to reduce poverty, revitalize low-income communities, and empower low-income families and individuals to become self-sufficient, for which the Family Independence Agency is the lead state agency.

11. Employment and training activities of the Department of Housing and Urban Development, which provide services and resources to families eligible for public housing to achieve economic independence and self-sufficiency.

12. Programs authorized under state unemployment compensations laws, for which the Department of Consumer and Industry Services is the lead state agency.

II. CREATION OF THE MICHIGAN WORKFORCE INVESTMENT BOARD

A. Consistent with the provisions of the federal Workforce Investment Act of 1998 and regulations issued pursuant to the Act, the Michigan Workforce Investment Board is hereby created within the Michigan Department of Career Development as a Type II entity as defined in Section 3 of Act No. 380 of the Public Acts of 1965, as amended, being Section 16.103 of the Michigan Compiled Laws.

B. The Board shall have fifty-three (53) members.

C. The membership of the Board shall be as provided in Section 111(b) of the Workforce Investment Act (29 USC 2821(b)) and regulations issued pursuant to the Act as follows:

1. The Governor.

2. Two (2) members of the Michigan Senate appointed by the Senate Majority Leader.

3. Two (2) members of the Michigan House of Representatives appointed by the Speaker of the House of Representatives.

4. Appointees of the Governor as follows:

a. Twenty-seven (27) members from lists of nominees submitted by state business organizations and business trade associations, who shall be business owners, chief executive or operating officers, or other business executives with optimum policy-making or hiring authority within their respective business including members of local boards described in Section 2832 (b)(2)(A)(i) of Title 29 of the United States Code.

b. Two (2) chief elected officials of local units of government.

c. Two (2) members representing state labor organizations from a list of six (6) individuals who have been nominated by state labor federations.

d. Two (2) members who have experience with respect to youth activities.

e. Two (2) members who have expertise in the delivery of workforce investment activities, who may include the chief executive officers of community colleges or community-based organizations.

f. One (1) member to represent K-12 school districts or public school academies as defined by the Revised School Code, Act No. 451 of the Public Acts of 1976, as amended, being Section 380.1 et seq. of the Michigan Compiled Laws.

g. One (1) member to represent intermediate school districts as defined by the Revised School Code, Act No. 451 of the Public Acts of 1976, as amended, being Section 380.1 et seq. of the Michigan Compiled Laws.

h. Four (4) members representing the lead state agencies, or their successor agencies, with responsibility for one-stop programs, as follows:

- i. the Director of the Department of Career Development,
- ii. the Director of the Department of Community Health,
- iii. the Director of the Department of Consumer and Industry Services, and
- iv. the Director of the Family Independence Agency.

i. Five (5) members appointed by the Governor to represent other one-stop partners as required by the federal Workforce Investment Act, including representatives of the Department of Housing and Urban Development, the Workforce Investment Act Job Corps program, the Workforce Investment Act Native American Programs, the Workforce Investment Act Migrant and Seasonal Farmworker Programs, and Workforce Investment Act Youth Opportunity Grant Program.

j. Two (2) members of the general public appointed by the Governor.

D. An individual appointed to serve as a Board member shall serve only while serving in the office of the respective organization, agency or entity in subparagraphs C.2. through C.4. that qualifies him or her for membership on the Board.

E. All members of the Board shall be individuals with optimum policymaking authority within the organizations, agencies or entities that they represent as required by federal statute and regulation.

F. The Board shall represent geographically diverse regions of Michigan to the extent required by federal statute and regulation.

G. Except as otherwise provided in this subsection, members of the Board shall hold office for a term of three (3) years.

1. Members appointed from Michigan House of Representatives and the Michigan State Senate shall serve a term during the term of the legislature in which they were appointed.

2. Of the members initially appointed to represent Michigan business entities, nine (9) members shall be appointed for a term of three (3) years, nine (9) members shall be appointed for a term of two (2) years, and nine (9) members shall be appointed for a term of one (1) year.

3. The members initially appointed as chief elected officials of local units of government shall be appointed for a term of two (2) years.

4. The members initially appointed to represent youth activities shall be appointed for a term of two (2) years.

5. The members initially appointed to represent workforce investment activities shall be appointed for a term of one (1) year.

6. The member initially appointed to represent K-12 school districts shall be appointed for a term of one (1) year.

7. The member initially appointed to represent intermediate school districts shall be appointed for a term of one (1) year.

8. The members initially appointed to represent other one-stop partners shall be appointed for a term of one (1) year.

H. A vacancy on the commission caused by the expiration of a term or other cause of termination of membership on the commission shall be filled in the same manner as the original appointment.

I. A member appointed to fill a vacancy created other than by expiration of a term shall be appointed for the unexpired term of the member who he or she is to succeed in the same manner as the original

appointment. A member may be reappointed for additional terms.

III. CHARGE TO THE MICHIGAN WORKFORCE INVESTMENT BOARD

A. The Board shall be advisory in nature and shall assist the Governor with the following functions as described in Section 111(d) of the federal Workforce Investment Act of 1998 (29 USC 2821(d)) and any regulations issued pursuant to the Act:

1. Development of the state Workforce Investment Act plan.
2. Development and continuous improvement of a statewide workforce investment system involving:
 - a. Formation of linkages to assure coordination of effort and to prevent duplicative activity among programs and services available through the one-stop delivery system; and
 - b. Review of local Workforce Investment Act plans.
3. Provide comments on the state performance measures taken pursuant to the Carl D. Perkins Vocational and Applied Technology Education Act, 20 USC 2323(b.)
4. Designation of local workforce investment areas.
5. Development of allocation formulas for the distribution of funds to local workforce investment areas for adult employment and training activities and youth activities.
6. Development and continuous improvement of comprehensive state performance measures to assess the effectiveness of state workforce investment activities, including state adjusted levels of performance.
7. Preparation of the state's Workforce Investment Act annual report.
8. Development of the statewide employment statistics system.
9. Development of a Workforce Investment Act incentive grant application and application process.

B. The Board shall also advise the Director of the Department of Career Development on the operation of the following programs:

1. The Work First Program, authorized by Section 57f of the Social Welfare Act, Act No. 280 of the Public Acts of 1939, as amended, being Section 400.57f of the Michigan Compiled Laws.
2. The Food Stamp Employment and Training Program, authorized under the federal Food Stamp Act of 1977, as amended by the Balanced Budget Act of 1997, 7 USC 2015 (d)(4).
3. The Career Preparation System, authorized under Sections 67 and 68 of the School Aid Act, Act No. 94 of the Public Acts of 1979, as amended, being Sections 388.1667 and 388.1668 of the Michigan Compiled Laws.
4. The North American Free Trade Agreement Transitional Adjustment Assistance Program, authorized under chapter 2 of Title II of the Trade Act of 1974, 19 USC 2271 et seq.
5. The Adult Education Programs, authorized under Sections 107 and 108 of the School Aid Act, Act No. 94 of the Public Acts of 1979, as amended, being Sections 388.1707 and 388.1708 of the Michigan Compiled Laws.

IV. OPERATIONS OF THE MICHIGAN WORKFORCE INVESTMENT BOARD

A. A majority of the members of the Board shall be representatives of Michigan business entities as required by federal statute and regulation.

B. As required by federal statute and regulation, the Governor shall designate as chairperson of the Board a member representing state business entities who shall serve at the pleasure of the Governor.

C. The Board may promulgate bylaws, not inconsistent with law and with this Order, governing its organization, operation and procedure.

D. A majority of the serving members consisting of a majority of members representing state business entities constitutes a quorum for the transaction of business at a meeting. Members participating in a meeting by the use of telephonic or video equipment shall be deemed present at the meeting. The Board shall act by a majority vote of its members. Voting shall be conducted in person or by use of telephonic or video equipment.

E. The Board shall meet at the call of the chairperson and as may be provided in the bylaws of the Board. Meetings of the Board may be held at any location within the state of Michigan. Gubernatorial appointees unable to comply with attendance requirements specified in the Board's bylaws, upon request of the chair, shall resign from the board.

F. The Board may, as appropriate, make inquiries, studies, and investigations, hold hearings, and receive comments from the public.

G. The Board may establish one or more subcommittees consisting of Board members to investigate and analyze specific issues, consistent with the charge to the Board contained in Section III of this order. The chair of the Board shall designate the members of each subcommittee established by the Board. Subcommittees shall recommend proposed actions, plans, comments, formulas, measures, reports or policies to the Board, consistent with the Board's charge. The Board may adopt, reject or modify recommendations proposed by subcommittees.

H. Members of the Board shall serve without compensation. Members of the Board may receive reimbursement for necessary travel and expenses according to the relevant procedures of the Civil Service Commission and the Department of Management and Budget.

I. The Board may hire or retain such contractors, sub-contractors, advisors, consultants and agents, and may make and enter into contracts necessary or incidental to the exercise of the powers of the Board and the performance of its duties as the Director of the Department of Career Development may deem advisable and necessary, in accordance with the relevant statutes, rules and procedures of the Civil Service Commission and the Department of Management and Budget.

J. Subject to appropriations and other applicable law, the Board may apply for, receive and expend monies from any source, public or private, including but not limited to, gifts, grants, donations of monies and government appropriations. The Board may also accept donations of labor, services or other things of value from any public or private agency or person.

K. Members of the Board shall refer all legal, legislative and media contacts to the Department of Career Development.

L. The Board shall be staffed by personnel within the Department of Career Development, as designated by the Director.

M. The Auditor General, or a certified public accountant appointed by the Auditor General, may annually conduct and remit to the Governor and the Legislature an audit of the Board and, in the conduct of the audit, shall have access to records of the Board at any time.

V. MISCELLANEOUS

A. All departments, boards, commissioners, or officers of the state or of any political subdivision thereof shall give to the Board, or to any member or representative thereof, any necessary assistance required by the Board, or any member or representative thereof, in the performance of the duties of the Board so far as is compatible with its, his or her duties; free access shall also be given to any books, records or documents in its, his or her custody, relating to matters within the scope of inquiry, study or investigation of the Board.

B. Any suit, action or other proceeding lawfully commenced by, against or before any entity affected by this Order shall not abate by reason of the taking effect of this Order. Any suit, action or other proceeding may be maintained by, against or before the appropriate successor of any entity affected by this Order.

C. The invalidity of any portion of this Order shall not affect the validity of the remainder thereof.

D. The Governor's Workforce Commission, established by Executive Order 1994-26, is hereby abolished.

History: 2002, E.R.O. No. 2002-4, Eff. May 26, 2002.

MICHIGAN WORKS ONE-STOP SERVICE CENTER SYSTEM ACT

Act 491 of 2006

AN ACT to establish the Michigan works one-stop service center system to deliver workforce development programs and services tailored to local needs; to provide for Michigan works areas; to provide for local workforce development boards; to provide for education advisory groups; to provide for consolidated access to employment and retention programs in one-stop service centers; and to prescribe the powers and duties of the Michigan works one-stop service center system and of certain state and local governmental officers and agencies.

History: 2006, Act 491, Imd. Eff. Dec. 29, 2006.

The People of the State of Michigan enact:

408.111 Short title.

Sec. 1. This act shall be known and may be cited as the "Michigan works one-stop service center system act".

History: 2006, Act 491, Imd. Eff. Dec. 29, 2006.

408.113 Definitions.

Sec. 3. As used in this act:

- (a) "Chief elected official" means a chief elected official of a unit of general local government.
- (b) "Department" means the department of labor and economic growth.
- (c) "Education advisory group" means an education advisory group described in section 23.
- (d) "Michigan works agency" means an entity designated to be the administrator for workforce development activities in a local Michigan works area under the guidance of the local workforce development board.
- (e) "Michigan works area" means a geographic area that the governor designates as a local workforce investment area under section 116 of the workforce investment act, 29 USC 2831, including an area designated and recognized under that act before the effective date of this act.
- (f) "Michigan works one-stop service center" means a facility designated to provide access to services delivered under the Michigan works one-stop service center system and certified as meeting standards established by the department.
- (g) "Michigan works one-stop service center system" means the integrated and coordinated system of local boards, agencies, service centers, and advisory groups described in section 5 to deliver workforce development services and implement federal and state law.
- (h) "Local workforce development board" means a local workforce investment board established as provided in section 9.
- (i) "Workforce investment act" means the workforce investment act of 1998, 29 USC 2801 to 2945.

History: 2006, Act 491, Imd. Eff. Dec. 29, 2006.

408.115 Michigan works one-stop service center system; creation.

Sec. 5. (1) The Michigan works one-stop service center system is created to provide an integrated and coordinated system for delivery of workforce development programs and services tailored to local needs, including, but not limited to, portions of services and programs regulated or funded under all of the following state and federal laws:

- (a) Title I of the workforce investment act, Public Law 105-220.
- (b) The Wagner-Peyser act, 29 USC 49 to 49c and 49d to 49l-2.
- (c) Section 221 of the trade act of 1974, 19 USC 2271.
- (d) Section 57f of the social welfare act, 1939 PA 280, MCL 400.57f.
- (e) Section 6(d)(4) of the food stamp act of 1977, 7 USC 2015.
- (f) Reed act transfers under 42 USC 1101 to 1110.

(2) The system consists of the local workforce development board in each Michigan works area, Michigan works agencies, Michigan works one-stop service centers, and education advisory groups.

History: 2006, Act 491, Imd. Eff. Dec. 29, 2006.

408.117 Designation of Michigan works areas.

Sec. 7. The governor shall designate Michigan works areas in the state in accordance with section 116 of the workforce investment act, 29 USC 2831.

History: 2006, Act 491, Imd. Eff. Dec. 29, 2006.

408.119 Local workforce development board; appointment; certification.

Sec. 9. The chief elected official in each Michigan works area shall appoint and the governor shall certify a local workforce development board for that Michigan works area in accordance with section 117 of the workforce investment act, 29 USC 2832.

History: 2006, Act 491, Imd. Eff. Dec. 29, 2006.

408.121 Local workforce development board; members.

Sec. 11. All of the following apply to a local workforce development board:

(a) A majority of the members of a local workforce development board shall be representatives of the private sector appointed from a list of individuals nominated by local business organizations and business trade associations.

(b) A local workforce development board shall include representatives of education, the department of human services, the department of labor and economic growth, vocational rehabilitation providers, organized labor, economic development organizations, and community-based organizations. Representatives of government agencies shall be nominated by the department.

(c) Members of a local workforce development board shall be appointed for fixed and staggered terms.

(d) The chairperson of the local workforce development board shall be an individual from the private sector elected by the board.

History: 2006, Act 491, Imd. Eff. Dec. 29, 2006.

408.123 Local workforce development board; duties.

Sec. 13. A local workforce development board shall do all of the following in cooperation with the chief elected officials in the Michigan works area:

(a) Develop and submit to the governor a plan for coordinating local workforce development services for employers and job seekers in the area. The plan shall provide for access to designated core services with no fees or charges and shall provide services beyond the core services based on eligibility criteria.

(b) Award competitive grants or contracts to eligible providers.

(c) Develop a budget.

(d) Employ staff necessary to carry out the duties of the board.

(e) Solicit and accept grants and donations.

(f) Oversee the operation of the one-stop delivery of services through the Michigan works one-stop service center system.

(g) Establish local performance standards through negotiation with the department for evaluating and improving the Michigan works one-stop service center system.

(h) Coordinate workforce development activities with other economic development activities and strategies in the Michigan works area.

(i) Promote private sector employer participation in the Michigan works one-stop service center system.

(j) Make available connecting, brokering, and coaching activities through intermediaries to help meet employer hiring needs.

(k) Appoint an education advisory group and its chair.

(l) Conduct business at public meetings held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275, and make information available to the public concerning performance of its duties or other information requested under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(m) Any other duties, functions, or responsibilities required of the board to implement the workforce investment act or state or federal law.

History: 2006, Act 491, Imd. Eff. Dec. 29, 2006.

408.125 Conflict of interest.

Sec. 15. (1) A local workforce development board and each member of the board shall avoid a conflict of interest with duties of the board. Except as provided in subsection (2), an individual shall not be appointed to or serve on a local workforce development board if he or she has an ownership interest in or is employed by an organization that receives money under the direct control of the board or if the individual engages in any other activity that creates a conflict of interest or what would appear to a reasonable person to be a conflict of interest.

(2) An individual who has an interest in or is employed by an entity that receives money under the partial or complete control of the local workforce development board may be appointed to or continue to serve on the board if the individual does not hold a policy-making position with the entity and would not receive other

than a remote or incidental benefit from the board's decisions.

(3) The exception to the strict conflict of interest policy provided in subsection (2) applies to allow local workforce development board representation from entities such as a school that enrolls students with tuition paid from funds under the control of the board, a government agency from which representation is required, and an employer that accepts compensation for extraordinary costs of providing on-the-job training from funds under the board's control.

History: 2006, Act 491, Imd. Eff. Dec. 29, 2006.

408.127 Designation of entities to perform administrative functions.

Sec. 17. The local workforce development board and local officials in each Michigan works area shall designate an entity to perform administrative functions. The entity shall be 1 of the following:

- (a) A public office or agency of a local unit of government within the Michigan works area.
- (b) A private nonprofit agency servicing 1 or more units of local government within the Michigan works area.
- (c) A nonprofit organization exempt from tax under section 501(c)(3) of the internal revenue code, 26 USC 501.

(d) An entity organized under the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, or 1967 (Ex Sess) PA 8, MCL 124.531 to 124.536.

History: 2006, Act 491, Imd. Eff. Dec. 29, 2006.

408.129 Administrator; service; activities; direct services; approval of governor; pilot or demonstration projects.

Sec. 19. (1) An administrative entity designated under section 17 shall serve as the administrator for state and federal funding provided to the workforce development board for workforce development services and activities in the Michigan works area. Subject to subsection (2), an administrative entity designated under section 17 may engage in any activity necessary to fulfill the intent of this act, including, but not limited to, the following:

(a) Informing the state, units of local government, private agencies and organizations, and the general public of the nature and extent of the need for workforce development services for businesses and individuals within the Michigan works area.

(b) Developing and administering local workforce development programs within the Michigan works area.

(c) Conducting pilot and demonstration projects to research the effectiveness of innovative approaches to reduce unemployment, improve services, and utilize resources.

(d) Providing and advocating for training and technical assistance to public and private agencies, community groups, and local units of government to better define problems, improve services, and facilitate citizen participation.

(e) Increasing interagency coordination and cooperation in serving businesses and individuals.

(f) Entering into agreements with federal, state, and local public and private agencies and organizations if necessary to carry out the purposes of this act.

(g) Receiving and accepting grants or gifts to support or promote the activities authorized by this act.

(h) Implementing and operating Michigan works one-stop service centers.

(i) Engaging in any other activity necessary to fulfill the intent of this act.

(2) Except for incumbent worker training and business services, an administrative entity designated under section 17 shall not provide workforce development services directly to job seekers and individual trainees without the approval of the governor.

(3) The department shall establish criteria and procedures for approving all pilot or demonstration projects described in subsection (1)(c) that are funded by the department.

History: 2006, Act 491, Imd. Eff. Dec. 29, 2006.

408.131 Service providers; competitive procurement process; agreement to deliver services.

Sec. 21. (1) Except as provided in subsection (2), an administrative entity designated under section 17 shall provide state or federally funded workforce development services to program applicants and participants only through service providers selected by a competitive procurement process established in accordance with department policy and applicable state law.

(2) An administrative entity designated under section 17 may provide state or federally funded services directly to program applicants and participants without contracting with a service provider, if the department determines after a competitive procurement process that no other provider is capable of providing the required services within the limits of available funding and cost-to-benefit analysis.

(3) Except as otherwise provided in this section, an administrative entity designated under section 17 may enter into any agreement necessary to deliver services under this act.

History: 2006, Act 491, Imd. Eff. Dec. 29, 2006.

408.133 Education advisory group.

Sec. 23. (1) A local workforce development board shall appoint an education advisory group to operate in the Michigan works area and serve in an advisory capacity to the board on educational issues. The board shall appoint the chairperson of that group.

(2) An education advisory group appointed under this section shall include local workforce development board members and representatives of employers, labor representatives, local school districts, postsecondary institutions, intermediate school districts, career and technical educators, public school parents, and academic educators. An education advisory group member shall be employed in the sector he or she represents.

(3) The conflict of interest provisions in section 15 do not apply to the members of an education advisory group appointed under this section.

History: 2006, Act 491, Imd. Eff. Dec. 29, 2006.

408.135 Oversight and evaluation by department; report.

Sec. 25. The department shall oversee and evaluate the activities of the Michigan works agencies and shall require Michigan works agencies to report information to the department to facilitate the oversight. All the reported information shall be available to the public.

History: 2006, Act 491, Imd. Eff. Dec. 29, 2006.

DIVISION ON DEAFNESS ACT Act 72 of 1937

AN ACT to establish the division on deafness and the advisory council on deafness within the department of labor; to prescribe the powers and duties of the department, the division, the council, and certain state officers; to establish a fund and provide for expenditures from that fund; and to provide for an appropriation.

History: 1937, Act 72, Eff. Oct. 29, 1937;—Am. 1988, Act 434, Eff. Mar. 30, 1989.

The People of the State of Michigan enact:

408.201 Short title.

Sec. 1. This act shall be known and may be cited as the “division on deafness act”.

History: 1937, Act 72, Eff. Oct. 29, 1937;—CL 1948, 408.201;—Am. 1988, Act 434, Eff. Mar. 30, 1989.

Compiler's note: For transfer of powers and duties of the commission on disability concerns established in Executive Order 1995-11 from the department of labor to the family independence agency, see E.R.O. No. 1996-2, compiled at MCL 445.2001 of the Michigan Compiled Laws.

For transfer of the advisory council on deaf and hard of hearing from the family independence agency to the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.202 Definitions.

Sec. 2. As used in this act:

(a) “Council” means the advisory council on deafness established in section 5.

(b) “Deaf person” means a person whose hearing is totally impaired or whose hearing, with or without amplification, is so seriously impaired that the primary means of receiving spoken language is through other sensory input, including, but not limited to, lipreading, sign language, finger spelling, and reading.

(c) “Department” means the department of labor.

(d) “Division” means the division on deafness established in section 3.

(e) “Hearing impaired person” means a person who has a degree of hearing loss that ranges from mild to profound. Hearing impaired person includes a deaf person.

History: 1937, Act 72, Eff. Oct. 29, 1937;—CL 1948, 408.202;—Am. 1988, Act 434, Eff. Mar. 30, 1989.

Compiler's note: For transfer of the advisory council on deaf and hard of hearing from the family independence agency to the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.203 Division on deafness; establishment; purpose; appointment and qualifications of director.

Sec. 3. (1) The division on deafness is established within the department. The purpose of the office is to protect and assist all hearing impaired persons, with special emphasis on deaf persons.

(2) The division shall be supervised by a director of the division who shall be appointed by the director of labor. The director of the division shall be a member of the classified state civil service, hold not less than a bachelor's degree, be fluent in American sign language, and have the ability to communicate in various ways with deaf persons.

History: 1937, Act 72, Eff. Oct. 29, 1937;—CL 1948, 408.203;—Am. 1988, Act 434, Eff. Mar. 30, 1989.

Compiler's note: For transfer of the advisory council on deaf and hard of hearing from the family independence agency to the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.204 Duties of division; fees.

Sec. 4. (1) Under the supervision of the department, the division shall do all of the following:

(a) Advocate for hearing impaired persons who encounter communication and other difficulties in employment, education, public accommodation, public service, and housing.

(b) Work closely with all public and privately funded organizations that provide developmental, educational, financial, preventative, protective, placement, recreational, rehabilitative, or health services to hearing impaired persons.

(c) Encourage providers of services to hearing impaired persons to improve the quality and coordination of their delivery systems.

(d) Provide information on deafness to hearing impaired persons and the public.

(e) Provide information and referral services to hearing impaired persons to insure that their rights are protected.

(f) Provide information to hearing impaired persons on programs and services provided for them by each level of government.

- (g) Promote new services, when necessary, for hearing impaired persons.
- (h) Sponsor or cosponsor conferences, workshops, or seminars to educate hearing impaired persons and the public about deafness.
- (i) Maintain statistics, facts, and data pertaining to hearing impaired persons of all ages and degrees of hearing loss.
- (j) Provide technical assistance to state agencies and the public regarding communication accessibility for hearing impaired persons.
- (k) Provide direct interpreter services to state agencies, the legislature, and the governor.
- (l) Fulfill its duties under the deaf persons' interpreters act, Act No. 204 of the Public Acts of 1982, being sections 393.501 to 393.509 of the Michigan Compiled Laws.
- (2) The division may assess reasonable fees for conferences sponsored or cosponsored by the division, the use of materials developed by the division, and for services provided by the division.

History: 1937, Act 72, Eff. Oct. 29, 1937;—CL 1948, 408.204;—Am. 1988, Act 434, Eff. Mar. 30, 1989.

Compiler's note: For transfer of the advisory council on deaf and hard of hearing from the family independence agency to the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.205 Advisory council on deafness; establishment; duty; appointment, qualifications, and terms of members; vacancy; quorum; meetings; expenses.

Sec. 5. (1) An advisory council on deafness is established within the department. The council shall advise the division on matters pertaining to hearing impaired persons.

(2) The council shall consist of 13 members appointed by the governor. The governor shall select members who are knowledgeable in the field of deafness. Not less than 7 members of the council shall be hearing impaired persons. The governor shall designate a chairperson of the council who shall serve in that capacity at the pleasure of the governor. The director of the division or his or her designee shall serve as secretary to the council.

(3) Except for members first appointed, the term of office of each member shall be 3 years. Of the members first appointed, 5 shall serve for 3 years, 4 for 2 years, and 4 for 1 year. A vacancy on the council shall be filled in the same manner as the original appointment for the remainder of the unexpired term.

(4) Seven members of the council shall constitute a quorum for the transaction of business at a meeting of the council. Except as provided by rule, action by the council shall be by vote of a majority of the members present at a meeting. The council shall meet not less than twice a year at the call of the chairperson.

(5) A member of the council may be reimbursed for actual and necessary expenses incurred in the performance of an official duty of the council.

History: 1937, Act 72, Eff. Oct. 29, 1937;—CL 1948, 408.205;—Am. 1988, Act 434, Eff. Mar. 30, 1989.

Compiler's note: For transfer of the advisory council on deaf and hard of hearing from the family independence agency to the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.206 Conducting business of council at public meeting; notice; availability of writings to public.

Sec. 6. (1) The business which the council may perform shall be conducted at a public meeting held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

(2) A writing prepared, owned, used, in the possession of, or retained by the council in the performance of an official function shall be made available to the public in compliance with the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

History: Add. 1988, Act 434, Eff. Mar. 30, 1989.

Compiler's note: For transfer of the advisory council on deaf and hard of hearing from the family independence agency to the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.207 Gifts, grants, or other aid.

Sec. 7. The division may solicit and accept gifts, grants, or other aid from any source, whether public or private.

History: Add. 1988, Act 434, Eff. Mar. 30, 1989.

Compiler's note: For transfer of the advisory council on deaf and hard of hearing from the family independence agency to the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.208 Division of deafness fund; establishment; administration; receipt and disposition of

money; expenditure of revenue; disposition of unexpended money.

Sec. 8. (1) A division on deafness fund is established in the department of treasury to be administered by the department of labor.

(2) The division shall receive and forward to the state treasurer for deposit in the division on deafness fund all money received under section 7. The fund may receive as revenue money from any other source, as appropriated by the legislature.

(3) The revenue in the division on deafness fund shall be expended only for the implementation of this act.

(4) Money in the fund that is unexpended at the end of the fiscal year shall be carried over to the succeeding fiscal year, shall not revert to the general fund, and shall be expended as provided in subsection (3).

History: Add. 1988, Act 434, Eff. Mar. 30, 1989.

Compiler's note: For transfer of the advisory council on deaf and hard of hearing from the family independence agency to the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.209 Rules.

Sec. 9. The department shall promulgate, as necessary, rules to implement this act pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

History: Add. 1988, Act 434, Eff. Mar. 30, 1989.

Compiler's note: For transfer of the advisory council on deaf and hard of hearing from the family independence agency to the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.210 Appropriation.

Sec. 10. The legislature annually shall appropriate a sum sufficient to implement this act.

History: Add. 1988, Act 434, Eff. Mar. 30, 1989.

Compiler's note: For transfer of the advisory council on deaf and hard of hearing from the family independence agency to the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

EXECUTIVE REORGANIZATION ORDER
E.R.O. No. 1979-1

408.211 Functions of division of the deaf and deafened transferred from employment security commission to department of labor.

WHEREAS, the Division of the Deaf and Deafened was created within the Department of Labor by Act 72 of the Public Acts of 1937; and

WHEREAS, the Division was transferred to the Michigan Employment Security Commission by Act 311 of Public Acts of 1957; and

WHEREAS, the statutory powers and duties of the Division of the Deaf and Deafened are to promote the employment and enhance the welfare of deaf and deafened individuals; and

WHEREAS, the responsibility for advocacy on behalf of handicapped citizens to ensure employment opportunities, a barrier free environment, and equal benefits of receipt of services is vested in substantial part in the Michigan Department of Labor through the Commission on Handicapper Concerns, the Barrier Free Design Board, and the Commission for the Blind; and

WHEREAS, this increased awareness and greater assistance on behalf of all handicapped individuals, particularly the deaf and deafened, can best be carried out by the Department of Labor;

NOW, THEREFORE, I, WILLIAM G. MILLIKEN, Governor of the State of Michigan, pursuant to the authority vested in me by the Michigan Constitution of 1963 in Article V, Section 2, do hereby order that the powers, duties and responsibilities of the Division of the Deaf and Deafened be transferred from the Michigan Employment Security Commission to the Michigan Department of Labor.

It is further ordered that the records, personnel, property, unexpended balances of appropriations, allocations or other funds available to the Michigan Employment Security Commission for the conduct of the Division of the Deaf and Deafened be transferred to the Michigan Department of Labor.

In fulfillment of the requirements of Article V, Section 2 of the Michigan Constitution of 1963, the provisions of this Order shall become effective November 19, 1979.

History: 1979, E.R.O. No. 1979-1, Eff. Nov. 19, 1979.

EXECUTIVE REORGANIZATION ORDER
E.R.O. No. 1986-2

408.212 Rescinded. 1991, E.R.O. No. 1991-21, Eff. Dec. 28, 1991;—1994, E.R.O. No. 1994-2, Eff. Mar. 29, 1994.

EXECUTIVE REORGANIZATION ORDER
E.R.O. No. 2000-4

408.213 Establishment of Michigan council on technical excellence within department of career development; terms and conditions; rescission of executive order 1997-15; abolishment of council for career preparation standards.

WHEREAS, it is necessary in the interests of efficient administration and effectiveness of government to effect changes in the organization of the Executive Branch of government; and

WHEREAS, the global marketplace is more competitive than ever; and

WHEREAS, to compete nationally and internationally and to maintain and enhance our standard of living, Michigan must have better prepared citizens than our competitors; and

WHEREAS, a state with a high skilled workforce will have a better chance to experience economic growth, opportunity, and prosperity; and

WHEREAS, Michigan faces a critical shortage of skilled workers in the high-demand, high-wage occupations necessary to sustain and expand our economy; and

WHEREAS, a world class education system, and in particular, a world class technical education, that helps to retain and attract skilled workers requires the involvement of business and industry to drive skill standards and the establishment of a credentialing system to ensure that standards are met; and

WHEREAS, the Council for Career Preparation Standards, which Executive Order 1997-15 created, is currently housed in the Department of Career Development; and

WHEREAS, most of the functions, duties and responsibilities assigned to the Council for Career Preparation Standards are currently being handled by other state departments.

NOW, THEREFORE, I, John Engler, Governor of the state of Michigan, pursuant to the powers vested in me by the Constitution of the state of Michigan of 1963 and the laws of the state of Michigan, do hereby order the following:

1. The Michigan Council on Technical Excellence ("Council") is hereby established within the Department of Career Development on the following terms and conditions:

a. The Council shall consist of nine (9) members as follows:

The Chairperson of the Council shall be the Lieutenant Governor or his or her designee. One member shall include the Director of the Michigan Department of Career Development or his or her designee; and

Seven members, appointed by the Governor, representing business, labor and education.

b. With the exception of the Lieutenant Governor or his or her designee, and the Director of the Michigan Department of Career Development or his or her designee, each member shall serve for a term of three years, except that of the members first appointed, four shall be appointed for a term of two years, and three shall be appointed for a term of three years.

c. The Council is charged with the following responsibilities:

Work with voluntary partnerships formed from business, labor and education to identify the common knowledge and technical skills required to be a successful worker in major occupational areas within broad industry sectors. These skills will provide the basis for portable credentials which will indicate that secondary, post-secondary and adult learners have achieved specific competencies and can apply those competencies to particular industries and occupations.

Establish the Michigan Technical Excellence Program to certify existing and emerging secondary and post-secondary technical education programs for consistent quality throughout the state. Private technical training programs may also seek certification.

Recommend a system to award the Great Lakes Technical Certificate to individuals upon completion of approved programs.

Involve the Michigan Virtual University to support the Michigan Technical Excellence Program and Great Lakes Technical Certificate.

Work with the Council of Great Lakes Governors to establish portable credentials across the region as well as a skill standards database to improve information access and dissemination.

Establish a working relationship with the National Skills Standards Board in developing strategies consistent with the responsibilities of the Council.

2. All state departments, agencies, boards, commissions, or officers of the state shall cooperate and provide any necessary assistance required by the Council, or any member or representative thereof, in the performance of its duties. This shall include free access to any books, records or documents in the custody of the department, agency, board, commission, or officer that is within the scope of the inquiry, study or review of the Council.

3. Members of the Council shall not receive compensation, but may receive reimbursement for necessary travel and expenses for the performance of Council functions, based on relevant procedures of the Departments of Management and Budget and Civil Service rules and regulations.

4. The Council may promulgate bylaws, consistent with law and with this Executive Order, to govern its organization and procedure.

5. A majority of the serving members of the Council constitutes a quorum for the transaction of business at a meeting, notwithstanding the existence of one (1) or more vacancies. Voting upon actions taken shall be conducted by a majority vote of the members present in person at a meeting or present by use of amplified telephonic equipment. The Council shall meet at the call of the chair and as may be provided in the bylaws of the Council. Meetings of the Council may be held anywhere within the state of Michigan.

6. All executive branch departments and agencies shall cooperate with the Council in the performance of its responsibilities. Departments and agencies shall make every effort to provide the Council with key staff and other means of support to assist in the performance of its duties.

7. The chair of the Council may hire or retain such contractors, sub-contractors, advisors, consultants and agents as the chair may deem advisable and necessary, in accordance with relevant procedures, statutes, rules and regulations of the Civil Service Commission and the Department of Management and Budget, and may make and enter into contracts necessary or incidental to the exercise of the powers of and performance of the duties of the Council and the chair.

8. The Council may accept grants of funds and donations of funds, property, labor or other things of value from any department or office of the state of Michigan and the United States and from any other public or private office or person for the purpose of furthering the Council's purposes.

9. Executive Order 1997-15 is rescinded and the Council For Career Preparation Standards is abolished.

10. The invalidity of any portion of this Executive Order shall not affect the validity of the remainder thereof.

The provisions of this Executive Order shall become effective upon filing.

History: 2000, E.R.O. No. 2000-4, Eff. July 1, 2000.

Constitutionality: For transfer of powers and duties of the department of career development, or its director, relating to the council on technical excellence to the director of department of labor and economic growth by Type III transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

MICHIGAN COMMUNITY SERVICE COMMISSION
Act 219 of 1994

AN ACT to establish the Michigan community service commission; to provide for the powers and duties of the Michigan community service commission; and to provide for the powers and duties of state departments and agencies and certain state officers and employees.

History: 1994, Act 219, Imd. Eff. June 27, 1994.

The People of the State of Michigan enact:

408.221 Definitions.

Sec. 1. As used in this act:

- (a) "Commission" means the Michigan community service commission established in section 2.
- (b) "Community-based agency" means that term as defined in section 101 of title I, 42 U.S.C. 12511.
- (c) "Corporation" means the corporation for national and community service established in section 191 of title I, 42 U.S.C. 12651.
- (d) "National service laws" means that term as defined in section 101 of title I, 42 U.S.C. 12511.
- (e) "Out-of-school youth" means that term as defined in section 101 of title I, 42 U.S.C. 12511.
- (f) "Title I" means title I of the national and community service act of 1990, Public Law 101-610.

History: 1994, Act 219, Imd. Eff. June 27, 1994.

Compiler's note: For transfer of powers and duties of department of career development, including any board, commission, council, or similar entity within the department of career development, to the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.222 Michigan community service commission; establishment.

Sec. 2. The Michigan community service commission is established within the Michigan jobs commission, established by Executive Order No. 1993-2.

History: 1994, Act 219, Imd. Eff. June 27, 1994.

Compiler's note: For transfer of powers and duties of department of career development, including any board, commission, council, or similar entity within the department of career development, to the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.223 Appointment, qualifications, and terms of members; vacancy.

Sec. 3. (1) The commission shall consist of 25 members appointed by the governor.

(2) The commission shall include as voting members, except as otherwise indicated, at least 1 of each of the following:

- (a) An individual with expertise in the educational, training, and developmental needs of youth, particularly disadvantaged youth.
- (b) An individual with experience in promoting service and voluntarism among older adults.
- (c) A representative of a community-based agency.
- (d) The superintendent of public instruction, or his or her designee.
- (e) A representative of local government.
- (f) A representative of local labor organizations.
- (g) A representative of business.
- (h) An individual between the ages of 16 and 25 who is a participant or supervisor in a program as defined in section 101 of title I, 42 U.S.C. 12511.
- (i) A representative of a national service program described in section 122(a) of title I, 42 U.S.C. 12572.
- (j) The employee of the corporation designated under section 195 of title I, 42 U.S.C. 12651f, as the representative of the corporation in this state, as a nonvoting member.

(3) In addition to the members described in subsection (2), the commission may include as voting members any of the following:

- (a) Local educators.
- (b) Experts in the delivery of human, educational, environmental, or public safety services to communities and persons.
- (c) Representatives of Native American tribes.
- (d) Out-of-school youth or other at-risk youth.
- (e) Representatives of entities that receive assistance under the domestic volunteer service act of 1973, Public Law 93-113, 87 Stat. 394.

(4) Not more than 6 of the voting commission members shall be officers or employees of this state. The

governor may appoint additional officers or employees of state agencies operating community service, youth service, education, social service, senior service, and job training programs, as nonvoting, ex officio members of the commission.

(5) The governor shall ensure, to the maximum extent possible, that the commission membership is diverse with respect to race, ethnicity, age, gender, and disability characteristics. Not more than 50% of the voting members of the commission, plus 1 additional member, shall be from the same political party.

(6) Except as provided in this subsection, members of the commission shall serve for staggered 3-year terms expiring on October 1. The members constituting the Michigan community service commission under Executive Order No. 1993-24 on the day before the effective date of this act shall serve on the commission for the remainder of the terms for which they were appointed. Of the additional members, the governor shall appoint 1/3 for terms expiring October 1, 1995, 1/3 for terms expiring October 1, 1996, and 1/3 for terms expiring October 1, 1997.

(7) A vacancy in the office of a member of the commission is created in the manner provided in section 3 of chapter 15 of the Revised Statutes of 1846, being section 201.3 of the Michigan Compiled Laws. A vacancy shall be filled by appointment by the governor for the remainder of the term. The vacancy shall not affect the power of the remaining commission members to execute the duties of the commission.

History: 1994, Act 219, Imd. Eff. June 27, 1994.

Compiler's note: For transfer of powers and duties of department of career development, including any board, commission, council, or similar entity within the department of career development, to the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.224 Election of chairperson and other officers; meetings; quorum; participation in administration of grant program; business conducted at public meeting; writings subject to freedom of information act.

Sec. 4. (1) The voting members of the commission shall elect 1 of the voting members to serve as chairperson of the commission. The voting members of the commission may elect other officers from among the members of the commission.

(2) The commission shall meet quarterly. However, the commission shall meet more frequently at the call of the chairperson or if requested by 5 or more members.

(3) A majority of the members of the commission constitutes a quorum for the transaction of business at a meeting of the commission. A majority of the voting members present and serving are required for official action of the commission.

(4) Except as provided in subsection (5), a voting member of the commission shall not participate in the administration of the grant program described in section 7(r), including any discussion or decision regarding the provision of assistance or approved national service positions, or the continuation, suspension, or termination of assistance or such positions, to any program or entity if both of the following apply:

(a) A grant application relating to the grant program is pending before the commission.

(b) The application was submitted by a program or entity of which a member is, or in the 1-year period before the submission of such application was, an officer, director, trustee, full-time volunteer, or employee.

(5) If, as a result of the operation of subsection (4), the number of voting members of the commission is insufficient to establish a quorum for the purpose of administering the grant program described in section 7(r), the voting members excluded from participation by subsection (4) may participate in the administration of the grant program, to the extent permitted by regulations issued by the corporation under section 193A(b)(11) of title I, 42 U.S.C. 12651d.

(6) Subsection (4) does not limit the authority of any voting member of the commission to participate in either of the following:

(a) The discussion of, and hearing and forums on the general duties, policies, and operations of, the commission or the general administration of the grant program described in section 7(r).

(b) Similar general matters relating to the commission.

(7) The business which the commission may perform shall be conducted at a public meeting of the commission held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws.

(8) A writing prepared, owned, used, in possession of, or retained by the commission in the performance of an official function is subject to the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

History: 1994, Act 219, Imd. Eff. June 27, 1994.

Compiler's note: For transfer of powers and duties of department of career development, including any board, commission, council, or similar entity within the department of career development, to the department of labor and economic growth, see E.R.O. No. 2003-1,

408.225 Compensation; expenses.

Sec. 5. Members of the commission shall serve without compensation. However, members of the commission may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as members of the commission.

History: 1994, Act 219, Imd. Eff. June 27, 1994.

Compiler's note: For transfer of powers and duties of department of career development, including any board, commission, council, or similar entity within the department of career development, to the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.226 Staff; executive director.

Sec. 6. The commission shall have staff necessary for the commission to perform its functions. The commission staff shall include an executive director. The executive director shall report directly to the governor and the commission for the purpose of giving advice and making recommendations on programs and laws related to voluntarism and community service.

History: 1994, Act 219, Imd. Eff. June 27, 1994.

Compiler's note: For transfer of powers and duties of department of career development, including any board, commission, council, or similar entity within the department of career development, to the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.227 Duties of commission.

Sec. 7. The commission shall do all of the following:

- (a) Ensure that its funding decisions meet all federal and state statutory requirements.
- (b) Recommend innovative statewide service programs to increase volunteer participation in all age groups and community-based problem solving by diverse participants.
- (c) Develop and implement a centralized system for obtaining information and technical support concerning voluntarism and community service recruitment, projects, training methods, materials, and activities throughout this state. The commission shall provide the information and technical support upon request.
- (d) Promote interagency collaboration to maximize resources and develop a model of such collaboration on the state level.
- (e) Provide public recognition and support of volunteer efforts that address community needs by individuals, by private sector organizations and businesses, and by partnerships between the public and private sectors.
- (f) Stimulate increased community awareness of the effects of volunteer services in this state.
- (g) Utilize local, state, and federal resources to initiate, strengthen, and expand quality service programs.
- (h) Serve as this state's representative to national and state organizations that support the commission's mission.
- (i) Prepare for this state a national 3-year service plan that is developed through an open and public process that provides maximum participation and input from national service programs in this state and other interested members of the public. The plan shall be updated annually and contain information that the commission considers appropriate or the corporation requires. The plan shall ensure outreach to diverse community-based agencies that serve underrepresented populations, by either using established state networks and registries or establishing these networks and registries.
- (j) Prepare this state's financial assistance applications under section 117B of title I, 42 U.S.C. 12543, and section 130 of title I, 42 U.S.C. 12582.
- (k) Assist in the preparation of the department of education's application for assistance under section 113 of title I, 42 U.S.C. 12525.
- (l) Prepare this state's application under section 130 of title I, 42 U.S.C. 12582, for the approval of service positions that include the national service educational award described in division D of title I, 42 U.S.C. 12601 to 12604.
- (m) Make recommendations to the corporation with respect to priorities for programs receiving assistance under the domestic volunteer service act of 1973, Public Law 93-113, 87 Stat. 394.
- (n) Make technical assistance available to enable applicants for assistance under section 121 of title I, 42 U.S.C. 12571, to plan and implement service programs and to apply for assistance under the national service laws, using information and materials available through a clearinghouse established under section 198A of title I, 42 U.S.C. 12653a, if appropriate.
- (o) Assist in the provision of health care and child care benefits under section 140 of title I, 42 U.S.C.

12594, to participants in national service programs that receive assistance under section 121 of title I, 42 U.S.C. 12571.

(p) Develop a state system for the recruitment and placement of participants in programs that receive assistance under the national service laws.

(q) Disseminate information about national service programs that receive assistance under national service laws and about approved national service positions.

(r) Use assistance provided under section 121 of title I, 42 U.S.C. 12571, to administer this state's grant program in support of national service programs including the selection, oversight, and evaluation of grant recipients.

(s) Develop projects, training methods, curriculum materials, and other materials and activities related to national service programs that receive assistance directly from the corporation or from the state using assistance provided under section 121 of title I, for use by such programs upon request.

(t) Establish policies and procedures for the use of federal funds received under title I or the national service laws.

(u) Coordinate its functions, including recruitment, public awareness, and training activities, with any division of the corporation for national and community services.

History: 1994, Act 219, Imd. Eff. June 27, 1994.

Compiler's note: For transfer of powers and duties of department of career development, including any board, commission, council, or similar entity within the department of career development, to the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.228 National service program.

Sec. 8. The commission shall not directly carry out any national service program that receives assistance under section 121 of title I, 42 U.S.C. 12571.

History: 1994, Act 219, Imd. Eff. June 27, 1994.

Compiler's note: For transfer of powers and duties of department of career development, including any board, commission, council, or similar entity within the department of career development, to the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.229 Delegation of nonpolicymaking duties.

Sec. 9. Subject to requirements prescribed by the corporation, the commission may delegate nonpolicymaking duties to a state agency or to a public or private nonprofit organization.

History: 1994, Act 219, Imd. Eff. June 27, 1994.

Compiler's note: For transfer of powers and duties of department of career development, including any board, commission, council, or similar entity within the department of career development, to the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.230 Liability.

Sec. 10. (1) Except as provided in subsection (3), this state assumes liability with respect to any claim arising out of or resulting from any act or omission by a member of the commission within the scope of service of the commission member.

(2) A member of the commission shall not have any personal liability for any claim arising out of any act or omission by the member within the scope of the member's service on the commission.

(3) Subsection (2) does not limit personal liability for criminal acts or omissions, willful or malicious misconduct, acts or omissions for private gain, or any other act or omission outside the scope of the service of the commission member.

(4) This section does not do any of the following:

(a) Affect any other immunities and protections that may be available to the commission member under any law applicable to the member's service on the commission.

(b) Affect any other right or remedy against the state under any applicable law, or against any person other than a member of the commission.

(c) Limit or alter in any way the immunities available for state officials and employees not described in this act.

History: 1994, Act 219, Imd. Eff. June 27, 1994.

Compiler's note: For transfer of powers and duties of department of career development, including any board, commission, council, or similar entity within the department of career development, to the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.231 Compliance with federal law.

Sec. 11. The commission shall comply with all requirements of federal law, including but not limited to

requirements of coordination with other state agencies or with volunteer service programs.

History: 1994, Act 219, Imd. Eff. June 27, 1994.

Compiler's note: For transfer of powers and duties of department of career development, including any board, commission, council, or similar entity within the department of career development, to the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.232 Cooperation of state departments and agencies with commission.

Sec. 12. State departments and agencies shall cooperate with the commission in the performance of its functions. The commission may request, and state departments and agencies shall provide, policy and technical information required by the commission in the performance of its functions.

History: 1994, Act 219, Imd. Eff. June 27, 1994.

Compiler's note: For transfer of powers and duties of department of career development, including any board, commission, council, or similar entity within the department of career development, to the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

VESSELS Act 113 of 1909

408.251-408.287 Repealed. 1965, Act 228, Eff. Mar. 31, 1966.

STEAM BOILERS Act 174 of 1917

408.301-408.306 Repealed. 1965, Act 290, Eff. July 1, 1966.

SKI AREA SAFETY ACT OF 1962

Act 199 of 1962

AN ACT to provide for the inspection, licensing, and regulation of ski areas and ski lifts; to provide for the safety of skiers, spectators, and the public using ski areas; to provide for certain presumptions relative to liability for an injury or damage sustained by skiers; to prescribe the duties of skiers and ski area operators; to create a ski area safety board; to provide for the disposition of revenues; to provide for liability for damages which result from a violation of this act; to provide civil fines for certain violations of this act; and to provide criminal penalties for certain violations of this act.

History: 1962, Act 199, Imd. Eff. June 7, 1962;—Am. 1981, Act 86, Imd. Eff. July 2, 1981;—Am. 1995, Act 120, Imd. Eff. June 30, 1995.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled MCL 338.3501 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

408.321 Ski area safety act of 1962; short title.

Sec. 1. This act shall be known and may be cited as the “ski area safety act of 1962”.

History: 1962, Act 199, Imd. Eff. June 7, 1962.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

408.322 Definitions.

Sec. 2. As used in this act:

- (a) “Board” means the ski area safety board.
- (b) “Commissioner” means the director of commerce or an authorized representative of the director.
- (c) “Department” means the state department of commerce.
- (d) “Operator” means a person who owns or controls, or who has operational responsibility for, a ski area or ski lift. An operator includes this state or a political subdivision of this state.
- (e) “Passenger” means a person, skier or nonskier, who boards, disembarks from, or is transported by a ski lift, regardless of whether the ski lift is being used during the skiing season or nonskiing season, and includes a person waiting for or moving away from the loading or unloading point of a ski lift.
- (f) “Ski area” means an area used for skiing and served by 1 or more ski lifts.
- (g) “Skier” means a person wearing skis or utilizing a device that attaches to at least 1 foot or the lower torso for the purpose of sliding on a slope. The device slides on the snow or other surface of a slope and is capable of being maneuvered and controlled by the person using the device. Skier includes a person not wearing skis or a skiing device while the person is in a ski area for the purpose of skiing.
- (h) “Ski lift” means a device for transporting persons uphill on skis, or in cars on tracks, or suspended in the air by the use of cables, chains, belts, or ropes, and usually supported by trestles or towers with 1 or more spans. Ski lift includes a rope tow.

History: 1962, Act 199, Imd. Eff. June 7, 1962;—Am. 1976, Act 364, Imd. Eff. Dec. 23, 1976;—Am. 1981, Act 86, Imd. Eff. July 2, 1981;—Am. 1995, Act 120, Imd. Eff. June 30, 1995.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

408.323 Ski area safety board; creation; composition; qualifications; ex officio members.

Sec. 3. A ski area safety board consisting of 7 members is created within the office of the commissioner. The board consists of 3 ski area managers, 1 from the Upper Peninsula and 2 from the Lower Peninsula; 1 engineer with skiing experience; 1 member of the central United States ski association, a nonprofit corporation; 1 person with skiing experience from the Upper Peninsula representing the general public; and 1 with skiing experience from the Lower Peninsula representing the general public. The commissioner and an officer of the Michigan tourist council are ex officio members of the board without vote.

History: 1962, Act 199, Imd. Eff. June 7, 1962;—Am. 1976, Act 364, Imd. Eff. Dec. 23, 1976.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

Transfer of powers: See MCL 16.732.

408.324 Ski area safety board; appointment and terms of members; vacancies.

Sec. 4. Members of the board shall be appointed by the governor with the advice and consent of the senate for terms of 4 years and until their successors are appointed and qualified. Vacancies in the board shall be filled for the unexpired term.

History: 1962, Act 199, Imd. Eff. June 7, 1962;—Am. 1976, Act 364, Imd. Eff. Dec. 23, 1976.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

408.325 Ski area safety board; conducting business at public meeting; notice; election of chairperson and other officers; quorum; meetings; compensation and expenses.

Sec. 5. (1) The business which the board may perform shall be conducted at a public meeting of the board held in compliance with Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976. The board shall elect a chairperson and other officers it considers necessary to perform its duties between meetings. A majority of the 7 voting members shall constitute a quorum. The board shall meet not less than once yearly on the call of the chairperson or by written request of not less than 3 members.

(2) The per diem compensation of the members of the board, other than the commissioner, and the schedule for reimbursement of expenses shall be established annually by the legislature.

History: 1962, Act 199, Imd. Eff. June 7, 1962;—Am. 1976, Act 364, Imd. Eff. Dec. 23, 1976;—Am. 1978, Act 178, Imd. Eff. June 4, 1978.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

408.326 Rules; proposed legislation establishing fee schedule.

Sec. 6. (1) The board shall promulgate rules for the safe construction, installation, repair, use, operation, maintenance, and inspection of all ski areas and ski lifts as the board finds necessary for protection of the general public while using ski areas and ski lifts. The rules shall be reasonable and based upon generally accepted engineering standards, formulas, and practices.

(2) The board, with the advice of the commissioner, shall propose legislation to establish the fee schedule for permits, inspections, and plan review activities. The fees shall reflect the actual costs and expenses of the department for issuing permits and conducting inspections and plan reviews.

History: 1962, Act 199, Imd. Eff. June 7, 1962;—Am. 1976, Act 364, Imd. Eff. Dec. 23, 1976;—Am. 1981, Act 86, Imd. Eff. July 2, 1981.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

Administrative rules: R 408.61 et seq. of the Michigan Administrative Code.

408.326a Duties of ski area operator.

Sec. 6a. Each ski area operator shall, with respect to operation of a ski area, do all of the following:

(a) Equip each snow-grooming vehicle and any other authorized vehicle, except a snowmobile, with a flashing or rotating yellow light conspicuously located on the vehicle, and operate the flashing or rotating yellow light while the vehicle is moving on, or in the vicinity of, a ski run. A snowmobile operated in a ski area shall be operated with at least 1 operating white light located on the front of the snowmobile.

(b) Mark with a visible sign or other warning device the location of any hydrant or similar fixture or equipment used in snow-making operations located on a ski run, as prescribed by rules promulgated under section 20(3).

(c) Mark the top of or entrance to each ski run, slope, and trail to be used by skiers for the purpose of skiing, with an appropriate symbol indicating the relative degree of difficulty of the run, slope, or trail, using a symbols code prescribed by rules promulgated under section 20(3).

(d) Mark the top of or entrance to each ski run, slope, and trail which is closed to skiing, with an appropriate symbol indicating that the run, slope, or trail is closed, as prescribed by rules promulgated under section 20(3).

(e) Maintain 1 or more trail boards at prominent locations in each ski area displaying that area's network of ski runs, slopes, and trails and the relative degree of difficulty of each ski run, slope, and trail, using the

symbols code required under subdivision (c) and containing a key to that code, and indicating which runs, slopes, and trails are open or closed to skiing.

(f) Place or cause to be placed, if snow-grooming or snow-making operations are being performed on a ski run, slope, or trail while the run, slope, or trail is open to the public, a conspicuous notice at or near the top of or entrance to the run, slope, or trail indicating that those operations are being performed.

(g) Post the duties of skiers and passengers as prescribed in sections 21 and 22 and the duties, obligations, and liabilities of operators as prescribed in this section in and around the ski area in conspicuous places open to the public.

(h) Maintain the stability and legibility of all required signs, symbols, and posted notices.

History: Add. 1981, Act 86, Imd. Eff. July 2, 1981.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

Administrative rules: R 408.61 et seq. of the Michigan Administrative Code.

408.327 Promulgation of rules.

Sec. 7. The rules shall be promulgated pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws.

History: 1962, Act 199, Imd. Eff. June 7, 1962;—Am. 1976, Act 364, Imd. Eff. Dec. 23, 1976.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

Administrative rules: R 408.61 et seq. of the Michigan Administrative Code.

408.328 Commissioner of labor; administration of act.

Sec. 8. The commissioner, subject to the limitations herein contained and the rules and regulations of the board, shall administer and enforce the provisions of this act.

History: 1962, Act 199, Imd. Eff. June 7, 1962.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

408.329 Ski lifts; permits requirement, inspection.

Sec. 9. No person shall operate a ski lift without a permit issued by the commissioner. On or before October 1 of each year an operator shall apply for a permit to the commissioner on a form furnished by the commissioner and containing such information as the board may require. All ski lifts shall be inspected before they are originally put into operation for the public's use and thereafter at least once every 12 months, unless permitted to operate on a temporary permit.

History: 1962, Act 199, Imd. Eff. June 7, 1962.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

Transfer of powers: See MCL 16.732.

408.330 Ski lifts; temporary permits.

Sec. 10. The commissioner may issue a temporary permit for 30 calendar days to an operator, who has previously been operating in this state on a regular or annual basis, to continue operation. An inspection of his ski lifts shall be made within 30 days from the issuance of the permit. A ski lift inspected and covered by a permit in the preceding year may operate on a temporary basis until further inspected.

History: 1962, Act 199, Imd. Eff. June 7, 1962.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

408.331 Ski lifts; permits, issuance, expiration.

Sec. 11. If upon inspection a ski lift is found to comply with the rules and regulations of the board, the commissioner shall issue a permit to operate. A permit shall expire on September 30 of the following year.

History: 1962, Act 199, Imd. Eff. June 7, 1962.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

408.332 Ski lifts; erection, alteration, moving, plans and specifications; rope tows.

Sec. 12. Before a new ski lift is erected, or before a presently existing ski lift is moved to a different location, or whenever any additions or alterations are made which change the structure, mechanism, classification or capacity of any ski lift, the operator shall file with the department detailed, duplicate plans and specifications of such work. The plans and specifications shall be prepared by a qualified tramway firm or by an engineer, licensed in this state as a professional engineer, in accordance with Act No. 240 of the Public Acts of 1937, as amended, being sections 338.551 to 338.576 of the Compiled Laws of 1948. Upon approval of plans and specifications, the department shall issue a permit for such work. All rope tows shall be excluded from this section.

History: 1962, Act 199, Imd. Eff. June 7, 1962.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

408.333 Ski lifts; order to cease operation.

Sec. 13. The commissioner or board may order, in writing, a temporary cessation of operation of a ski lift if it has been determined after inspection to be hazardous or unsafe. Operation shall not resume until such conditions are corrected to the satisfaction of the commissioner or board.

History: 1962, Act 199, Imd. Eff. June 7, 1962.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

408.334 Ski lifts; existing installations.

Sec. 14. This act shall not be construed to prevent the use of any existing installation, upon inspection found to be in a safe condition and to conform with the rules and regulations of the board.

History: 1962, Act 199, Imd. Eff. June 7, 1962.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

408.335 Ski lifts; rules and regulations, modification for hardship, record.

Sec. 15. If there are practical difficulties or unnecessary hardships for an operator to comply with the rules and regulations under this act, the commissioner, with the approval of the board, may modify the application of such rules or regulations to such a situation, if the spirit of the provisions shall be observed and the public safety is secured. Any operator may make a written request to the board stating his grounds and applying for such modification. Any authorization by the commissioner and the board shall be in writing and shall describe the conditions under which the modification is permitted. A record of all modifications shall be kept in the department and open to the public.

History: 1962, Act 199, Imd. Eff. June 7, 1962.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

408.336 Ski lifts; fees.

Sec. 16. (a) An application for a permit shall be accompanied by fees of:

\$25.00 for an annual permit; or

\$2.00 for each rope tow,

\$5.00 for each T bar, J bar or platter pull,

\$15.00 for each chair lift or skimobile, and

\$30.00 for each aerial tramway,

if greater than the \$25.00 annual permit fee.

(b) Inspection fees shall be as follows:

\$8.00 for each rope tow,

\$20.00 for each T bar, J bar or platter pull,

\$60.00 for each chair lift or skimobile,

\$120.00 for each aerial tramway, and

\$50.00 for reinspections or special inspections at an operator's request.

Any operator may employ any person, partnership or corporation, approved by the commissioner and board, to make the inspections. Inspections made by any person, partnership, or corporation, that may be employed by an operator, shall be on forms furnished or approved by the department. Inspection fees shall be waived when the annual permit application is accompanied by such an inspection report.

(c) Fees for review and approval of plans prior to construction shall be \$200.00 for a chair lift, T bar, J bar, platter pull or tramway.

Fees for review and approval of plans for modification and alteration of an existing lift shall be \$50.00.

(d) Fees shall be paid to the department, which shall give receipts therefor.

History: 1962, Act 199, Imd. Eff. June 7, 1962;—Am. 1964, Act 130, Eff. Aug. 28, 1964.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

408.337 Chief inspector; inspection service.

Sec. 17. The department, with the advice and consent of the board, shall employ or retain a person qualified in engineering and training who shall be designated chief inspector. The chief inspector and such additional inspectors and other employees as may be necessary to properly administer this act may be hired on a temporary basis or borrowed from other state departments, or the department may contract with persons, partnerships or corporations for such inspection services on an independent basis.

History: 1962, Act 199, Imd. Eff. June 7, 1962.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

408.338 Revenue; disbursements.

Sec. 18. All fees for permits or inspections, or any other income received under this act, shall be paid into the general fund. All salaries and other moneys expended under this act shall be paid by the state treasurer from a fund appropriated by the legislature.

History: 1962, Act 199, Imd. Eff. June 7, 1962.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

408.339 Notice of public hearing.

Sec. 19. (1) In addition to the notice prescribed in section 5(1) notice of a public hearing held under this act shall be published not less than once and not less than 10 days before the hearing, in newspapers of general circulation prescribed by the commissioner.

History: 1962, Act 199, Imd. Eff. June 7, 1962;—Am. 1978, Act 178, Imd. Eff. June 4, 1978.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

408.340 Violations; penalties; rules.

Sec. 20. (1) Except for sections 21 to 24, and except as provided in subsection (2), a person who violates this act, or a rule or order promulgated or issued pursuant to this act, or a person who interferes with, impedes, or obstructs the commissioner, an authorized representative of the commissioner, or a board member in the performance of duties prescribed by this act, is guilty of a misdemeanor. Each day a violation or other act continues shall be considered a separate offense.

(2) A member of the board who intentionally violates section 5(1) shall be subject to the penalties prescribed in Act No. 267 of the Public Acts of 1976, as amended.

(3) Not more than 270 days after the effective date of this subsection, the board shall, pursuant to section 7, promulgate rules consistent with this act to implement this act, except for subsection (2) and sections 21, 22, 23, and 24, not to exceed \$50.00 for each violation.

History: 1962, Act 199, Imd. Eff. June 7, 1962;—Am. 1978, Act 178, Imd. Eff. June 4, 1978;—Am. 1981, Act 86, Imd. Eff. July 2, 1981.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

408.341 Skier conduct; prohibited conduct in ski area.

Sec. 21. (1) A skier shall conduct himself or herself within the limits of his or her individual ability and shall not act or ski in a manner that may contribute to his or her injury or to the injury of any other person. A skier shall be the sole judge of his or her ability to negotiate a track, trail, or slope.

(2) While in a ski area, a skier or passenger shall not do any of the following:

(a) Board a ski lift which has been designated as closed.

(b) Wilfully board or embark upon, or disembark from, a ski lift, except at an area designated for those purposes.

(c) Intentionally drop, throw, or expel an object from a ski lift while riding on the lift.

(d) Do any act which interferes with the running or operation of a ski lift, such as, but not limited to: swinging or bouncing on an aerial lift, attempting to contact supporting towers, machinery, guides, or guards while riding on a ski lift; or skiing out of the designated ski track on a surface lift or tow.

(e) Use a ski lift, unless the skier or passenger has the ability to use the lift safely without instruction on use of the lift by a ski area owner, manager, operator, or employee, or unless the skier or passenger requests and receives instruction before entering the boarding area of the ski lift.

(f) Use a ski lift or ski without properly engaging and using ski restraining devices, brakes, or restraining straps.

History: 1962, Act 199, Imd. Eff. June 7, 1962;—Am. 1981, Act 86, Imd. Eff. July 2, 1981.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

408.342 Duties of skier in ski area; acceptance of dangers.

Sec. 22. (1) While in a ski area, each skier shall do all of the following:

(a) Maintain reasonable control of his or her speed and course at all times.

(b) Stay clear of snow-grooming vehicles and equipment in the ski area.

(c) Heed all posted signs and warnings.

(d) Ski only in ski areas which are marked as open for skiing on the trail board described in section 6a(e).

(2) Each person who participates in the sport of skiing accepts the dangers that inhere in that sport insofar as the dangers are obvious and necessary. Those dangers include, but are not limited to, injuries which can result from variations in terrain; surface or subsurface snow or ice conditions; bare spots; rocks, trees, and other forms of natural growth or debris; collisions with ski lift towers and their components, with other skiers, or with properly marked or plainly visible snow-making or snow-grooming equipment.

History: Add. 1981, Act 86, Imd. Eff. July 2, 1981.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

408.343 Accidents causing injury; notice; identification; misdemeanor; penalty.

Sec. 23. (1) A skier involved in an accident causing an injury to another person shall to the extent that he or she is reasonably able to do so immediately notify the ski patrol or the operator, or law enforcement or emergency personnel, and shall clearly identify himself or herself. A skier who wilfully fails to give identification after involvement in a skiing accident with another person, or a skier who is reasonably able to do so who fails to notify the proper authorities or to obtain assistance when the skier knows that another person involved in the accident is in need of medical or other assistance, is guilty of a misdemeanor, punishable by imprisonment for not more than 30 days, or a fine of not more than \$100.00, or both.

(2) A skier involved in an accident causing an injury to himself or herself, but not to another person, shall immediately notify the ski patrol or the operator, or law enforcement or emergency personnel, if the accident created a known hazardous condition in the area where the accident occurred.

History: Add. 1981, Act 86, Imd. Eff. July 2, 1981.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

408.344 Violation of act; liability.

Sec. 24. A skier or passenger who violates this act, or an operator who violates this act shall be liable for that portion of the loss or damage resulting from that violation.

History: Add. 1981, Act 86, Imd. Eff. July 2, 1981.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

ELEVATORS
Act 82 of 1937

408.351-408.374 Repealed. 1967, Act 227, Eff. Nov. 2, 1967;—1967, Act 265, Imd. Eff. July 19, 1967.

MINIMUM WAGE LAW OF 1964 Act 154 of 1964

AN ACT to fix minimum wages for employees within this state; to prohibit wage discrimination; to provide for the administration and enforcement of this act; and to prescribe penalties for the violation of this act.

History: 1964, Act 154, Eff. Aug. 28, 1964;—Am. 1971, Act 62, Eff. Mar. 30, 1972.

The People of the State of Michigan enact:

408.381 Minimum wage law of 1964; short title.

Sec. 1. This act shall be known and may be cited as the “minimum wage law of 1964”.

History: 1964, Act 154, Eff. Aug. 28, 1964.

Compiler's note: For transfer of powers and duties of the wage deviation board from the department of labor to the director of the department of consumer and industry services, and the abolishment of the wage deviation board, see E.R.O. No. 1996-2, compiled at MCL 445.2001 of the Michigan Compiled Laws.

For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Transfer of powers: See MCL 16.480.

408.382 Definitions.

Sec. 2. As used in this act:

(a) “Commissioner” means the director of the department of consumer and industry services.

(b) “Employee” means an individual not less than 16 years of age employed by an employer on the premises of the employer or at a fixed site designated by the employer, and includes a minor employed under section 15(1) of the youth employment standards act, 1978 PA 90, MCL 409.115.

(c) “Employer” means a person, firm, or corporation, including the state and its political subdivisions, agencies, and instrumentalities, and a person acting in the interest of the employer, who employs 2 or more employees at any 1 time within a calendar year. An employer shall be subject to this act during the remainder of that calendar year.

(d) “Employ” means to engage, suffer, or permit to work.

History: 1964, Act 154, Eff. Aug. 28, 1964;—Am. 1966, Act 269, Imd. Eff. July 12, 1966;—Am. 1974, Act 304, Eff. Apr. 1, 1975;—Am. 1978, Act 135, Eff. Mar. 30, 1979;—Am. 1979, Act 45, Imd. Eff. July 2, 1979;—Am. 1980, Act 97, Imd. Eff. Apr. 17, 1980;—Am. 1997, Act 2, Imd. Eff. Mar. 12, 1997.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.383 Applicability of act.

Sec. 3. No employer shall pay any employee at a rate of less than prescribed in this act.

History: 1964, Act 154, Eff. Aug. 28, 1964;—Am. 1966, Act 269, Eff. Mar. 1, 1967.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No.

2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.384 Minimum hourly wage rate.

Sec. 4. (1) Subject to the exceptions specified in this act, the minimum hourly wage rate shall be:

- (a) Beginning September 1, 1997, \$5.15.
- (b) Beginning October 1, 2006, \$6.95.
- (c) Beginning July 1, 2007, \$7.15.
- (d) Beginning July 1, 2008, \$7.40.

(2) Notwithstanding subsection (1), if a ballot proposal that establishes a minimum wage is approved by the majority of electors voting on the question at the general election on November 7, 2006, the minimum wage shall be as established in the ballot proposal.

History: 1964, Act 154, Eff. Aug. 28, 1964;—Am. 1997, Act 1, Imd. Eff. Mar. 12, 1997;—Am. 1997, Act 2, Imd. Eff. Mar. 12, 1997;—Am. 2006, Act 81, Imd. Eff. Mar. 28, 2006.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.384a Compensation for overtime; exceptions; rules; unpaid minimum wages; appropriation; compensatory time in lieu of monetary overtime compensation.

Sec. 4a. (1) Except as otherwise provided in this section, an employee shall receive compensation at not less than 1-1/2 times the regular rate at which the employee is employed for employment in a workweek in excess of 40 hours.

(2) The state or a political subdivision, agency, or instrumentality of the state does not violate subsection (1) with respect to the employment of an employee in fire protection activities or an employee in law enforcement activities, including security personnel in correctional institutions, if any of the following applies:

(a) In a work period of 28 consecutive days, the employee receives for tours of duty, which in the aggregate exceed 216 hours, compensation for those hours in excess of 216 at a rate not less than 1-1/2 times the regular rate at which the employee is employed. The employee's regular rate shall be not less than the statutory minimum hourly rate.

(b) For an employee to whom a work period of at least 7 but less than 28 days applies, in the employee's work period the employee receives for tours of duty, which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in the employee's work period as 216 bears to 28 days, compensation for those excess hours at a rate not less than 1-1/2 times the regular rate at which the employee is employed. The employee's regular rate shall be not less than the statutory minimum hourly rate.

(c) If an employee engaged in fire protection activities would receive overtime payments under this act solely as a result of that employee's trading of time with another employee pursuant to a voluntary trading time arrangement, overtime, if any, shall be paid to employees who participate in the trading of time as if the time trade had not occurred. As used in this subdivision, "trading time arrangement" means a practice under which employees of a fire department voluntarily substitute for one another to allow an employee to attend to personal matters, which practice is neither for the convenience of the employer nor because of the employer's operations.

(3) The state or a political subdivision, agency, or instrumentality of the state engaged in the operation of a hospital or an establishment that is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises does not violate subsection (1) if both of the following conditions are met:

(a) Pursuant to a written agreement or written employment policy arrived at between the employer and the employee before performance of the work, a work period of 14 consecutive days is accepted instead of the

workweek of 7 consecutive days for purposes of overtime computation.

(b) For the employee's employment in excess of 8 hours in a workday and in excess of 80 hours in the 14-day period, the employee receives compensation at a rate of 1-1/2 times the regular rate, which rate shall be not less than the statutory minimum hourly rate at which the employee is employed.

(4) Subsections (1), (2), and (3) do not apply to any of the following:

(a) An employee employed in a bona fide executive, administrative, or professional capacity, including an employee employed in the capacity of academic administrative personnel or teacher in an elementary or secondary school. However, an employee of a retail or service establishment is not excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in the employee's workweek which the employee devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40% of the employee's hours in the workweek are devoted to those activities.

(b) An individual who holds a public elective office.

(c) A political appointee of a person holding public elective office or a political appointee of a public body, if the political appointee described in this subdivision is not covered by a civil service system.

(d) An employee employed by an establishment which is an amusement or recreational establishment, if the establishment does not operate for more than 7 months in a calendar year.

(e) An employee employed in agriculture, including farming in all its branches, which among other things includes: the cultivation and tillage of the soil; dairying; the production, cultivation, growing, and harvesting of agricultural or horticultural commodities; the raising of livestock, bees, fur-bearing animals, or poultry; and a practice, including forestry or lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including preparation for market, delivery to storage, or delivery to market or to a carrier for transportation to market or the processing or preserving of perishable farm products.

(f) An employee who is not subject to the minimum hourly wage provisions of this act.

(5) The director of the department of consumer and industry services shall promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to define the terms used in subsection (4).

(6) For purposes of administration and enforcement, an amount owing to an employee that is withheld in violation of this section is unpaid minimum wages under this act.

(7) The legislature shall annually appropriate from the general fund to each political subdivision affected by subsection (2) an amount equal to the difference in direct labor costs before and after January 4, 1979 which arises from any change in existing law resulting from the enactment of subsection (2) and incurred by each such political subdivision.

(8) In lieu of monetary overtime compensation, an employee subject to this act may receive compensatory time off at a rate of not less than 1-1/2 hours for each hour of employment for which overtime compensation is required under this act, subject to all of the following:

(a) The employer allows employees a total of at least 10 days of leave per year without loss of pay and provides the compensatory time to the employee only pursuant to either of the following:

(i) Applicable provisions of a collective bargaining agreement, memorandum of understanding, or any other written agreement between the employer and representative of the employee.

(ii) If employees are not represented by a collective bargaining agent or other representative designated by the employee, a plan adopted by the employer and provided in writing to its employees that provides employees with a voluntary option to receive compensatory time off for overtime work when there is an express, voluntary written request to the employer by an individual employee for compensatory time off in lieu of overtime pay before the performance of any overtime assignment.

(b) The employee has not earned compensatory time in excess of the applicable limit prescribed by subdivision (d).

(c) The employee is not required as a condition of employment to accept or request compensatory time. An employer shall not directly or indirectly intimidate, threaten, or coerce or attempt to intimidate, threaten, or coerce an employee for the purpose of interfering with the employee's rights under this section to request or not request compensatory time off in lieu of payment of overtime compensation for overtime hours, or requiring an employee to use compensatory time. In assigning overtime hours, an employer shall not discriminate among employees based upon an employee's choice to request or not request compensatory time off in lieu of overtime compensation. An employer who violates this subsection is subject to a civil fine of not more than \$1,000.00.

(d) An employee may not accrue more than a total of 240 hours of compensatory time. An employer shall do both of the following:

(i) Maintain in an employee's pay record a statement of compensatory time earned by that employee in the

pay period that the pay record identifies.

(ii) Provide an employee with a record of compensatory time earned by or paid to the employee in a statement of earnings for the period in which the compensatory time is earned or paid.

(e) Upon the request of an employee who has earned compensatory time, the employer shall, within 30 days following the request, provide monetary compensation for that compensatory time at a rate not less than the regular rate earned by the employee at the time the employee performed the overtime work.

(f) An employee who has earned compensatory time authorized under this subsection shall, upon the voluntary or involuntary termination of employment or upon expiration of this subsection, be paid unused compensatory time at a rate of compensation not less than the regular rate earned by the employee at the time the employee performed the overtime work. A terminated employee's receipt of or eligibility to receive monetary compensation for earned compensatory time shall not be used by either of the following:

(i) The employer to oppose an employee's application for unemployment compensation under the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.1 to 421.75.

(ii) The state to deny unemployment compensation or diminish an employee's entitlement to unemployment compensation benefits under the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.1 to 421.75.

(g) An employee shall be permitted to use any compensatory time accrued under this subsection for any reason unless use of the compensatory time for the period requested will unduly disrupt the operations of the employer.

(h) Unless prohibited by a collective bargaining agreement, an employer may terminate a compensatory time plan upon not less than 60 days' notice to employees.

(i) As used in this subsection:

(i) "Overtime compensation" means the compensation required under section 4a.

(ii) "Compensatory time" and "compensatory time off" mean hours during which an employee is not working and for which the employee is compensated in accordance with this subsection in lieu of monetary overtime compensation.

(iii) "Overtime assignment" means an assignment of hours for which overtime compensation is required under this act.

History: Add. 1974, Act 304, Eff. Apr. 1, 1975;—Am. 1975, Act 16, Imd. Eff. Mar. 31, 1975;—Am. 1978, Act 604, Imd. Eff. Jan. 4, 1979;—Am. 1997, Act 2, Imd. Eff. Mar. 12, 1997.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.384b Training hourly wage; employee less than 18 years of age; displacement prohibited; violation; fine.

Sec. 4b. (1) An employer may pay a new employee who is less than 20 years of age a training hourly wage of \$4.25 for the first 90 days of that employee's employment. The hourly wage authorized under this subsection is in lieu of the minimum hourly wage otherwise prescribed by this act.

(2) Except as provided in subsection (1), the minimum hourly wage for an employee who is less than 18 years of age is 85% of the general minimum hourly wage established in section 4.

(3) An employer shall not displace an employee to hire an individual at the hourly wage authorized under this section. As used in this subsection, "displace" includes termination of employment or any reduction of hours, wages, or employment benefits.

(4) A person who violates subsection (3) is subject to a civil fine of not more than \$1,000.00.

History: Add. 1997, Act 1, Imd. Eff. Mar. 12, 1997;—Am. 2006, Act 375, Eff. Oct. 1, 2006.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.385 Wage deviation board; appointment, qualifications, and terms of members; chairperson; commissioner as secretary; quorum; vote on recommendation or report; conducting business at public meeting; notice of meeting; availability of certain writings to public; compensation and expenses.

Sec. 5. (1) The governor shall appoint, with the advice and consent of the senate, a wage deviation board composed of 3 representatives of the employers, 3 representatives of the employees, and 3 persons representing the public. One of the 3 persons representing the public shall be designated as chairperson. Members shall serve for terms of 3 years, except that of the members first appointed, 1 from each group shall be appointed for 1 year, 1 for 2 years, and 1 for 3 years. The commissioner shall be secretary of the wage deviation board.

(2) A majority of the members of the board constitutes a quorum and the recommendation or report of the board requires a vote of not less than a majority of its members. The business which the wage deviation board may perform shall be conducted at a public meeting of the board held in compliance with Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

(3) A writing prepared, owned, used, in the possession of, or retained by the wage deviation board in the performance of an official function shall be made available to the public in compliance with Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(4) The per diem compensation of the board and the schedule for reimbursement of expenses shall be established annually by the legislature.

History: 1964, Act 154, Eff. Aug. 28, 1964;—Am. 1965, Act 255, Imd. Eff. July 21, 1965;—Am. 1966, Act 191, Eff. Mar. 10, 1967;—Am. 1975, Act 85, Imd. Eff. May 20, 1975;—Am. 1977, Act 169, Imd. Eff. Nov. 17, 1977.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.386 Rules.

Sec. 6. The commissioner may promulgate rules necessary for administration of this act pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws.

History: 1964, Act 154, Eff. Aug. 28, 1964;—Am. 1970, Act 36, Imd. Eff. June 24, 1970;—Am. 1974, Act 304, Eff. Apr. 1, 1975.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Administrative rules: R 408.701 et seq.; R 408.731 et seq.; R 408.751 et seq.; and R 408.771 et seq. of the Michigan Administrative Code.

408.387 Rates for apprentices, learners, and persons with physical or mental disabilities; establishment.

Sec. 7. On petition of a party in interest or on his or her own motion, the director of the department of

consumer and industry services shall establish a suitable scale of rates for apprentices, learners, and persons with physical or mental disabilities who are clearly unable to meet normal production standards. The rates established under this section may be less than the regular minimum wage rate for workers who are experienced and who are not disabled.

History: 1964, Act 154, Eff. Aug. 28, 1964;—Am. 1966, Act 269, Eff. Mar. 1, 1967;—Am. 1997, Act 1, Imd. Eff. Mar. 12, 1997.

Compiler's note: For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Administrative rules: R 408.701 et seq. of the Michigan Administrative Code.

408.387a Employees receiving gratuities; minimum hourly wage; "gratuities" defined.

Sec. 7a. (1) The minimum hourly wage rate of an employee shall be \$2.65 per hour if all of the following occur:

- (a) The employee receives gratuities in the course of his or her employment.
- (b) The gratuities described in subdivision (a) equal or exceed the difference between \$2.65 per hour and the minimum hourly wage established under section 4.
- (c) The gratuities are proven gratuities as indicated by the employee's declaration for federal insurance contribution act purposes.

(d) The employee was informed by the employer of the provisions of this section.

(2) As used in this section, "gratuities" means tips or voluntary monetary contributions received by an employee from a guest, patron, or customer for services rendered to that guest, patron, or customer and that the employee reports to the employer for purposes of the federal insurance contribution act, chapter 21 of subtitle C of the internal revenue code of 1986, 26 U.S.C. 3101 to 3128.

History: Add. 1974, Act 304, Eff. Apr. 1, 1975;—Am. 1997, Act 1, Imd. Eff. Mar. 12, 1997.

Compiler's note: For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.388 Wage deviation board; data from employer, hearings.

Sec. 8. The wage deviation board may request data of any employer, subject to the provisions of this act, as to the wages paid and hours worked by his employees and may hold such hearings as it deems necessary in obtaining this information.

History: 1964, Act 154, Eff. Aug. 28, 1964.

Compiler's note: For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.389 Wage deviation board; report, filing.

Sec. 9. The wage deviation board shall submit its report to the commissioner who shall file it in his office as a public record together with the regulations established by the board.

History: 1964, Act 154, Eff. Aug. 28, 1964.

Compiler's note: For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.390 Wage deviation board; reconsideration of deviated wage rate.

Sec. 10. At any time after a deviated wage rate has been in effect for 6 months or more, the wage deviation board may reconsider the rate.

History: 1964, Act 154, Eff. Aug. 28, 1964.

Compiler's note: For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.391 Statement of wages, hours, and deductions; inspection; posting of regulations and orders.

Sec. 11. Every employer, subject to the provisions of this act or of any regulation or order issued thereunder, shall furnish the employee a statement of the hours worked by the employee and of the wages paid to him listing deductions made each pay period and the employer shall furnish the commissioner upon demand a sworn statement of the same. Such records shall be open to inspection by the commissioner, his deputy or any authorized agent of the department at any reasonable time. Every employer subject to the provisions of this act or of any regulation or order issued under its provisions shall keep a copy of them posted in a conspicuous place in the area where employees are employed. The commissioner shall furnish copies of this act and the regulations and orders to employers without charge.

History: 1964, Act 154, Eff. Aug. 28, 1964.

Compiler's note: For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.392 Administration and enforcement of act; investigating and ascertaining wages; revealing facts or information.

Sec. 12. The commissioner shall administer and enforce this act; and at the request of the wage deviation board may investigate and ascertain the wages of employees of an employer subject to this act. The commissioner and the commissioner's employees shall not reveal facts or information obtained in the course of official duties, except as when required by law, to report upon or take official action or testify in proceedings regarding the affairs of an employer subject to this act.

History: 1964, Act 154, Eff. Aug. 28, 1964;—Am. 1977, Act 169, Imd. Eff. Nov. 17, 1977.

Compiler's note: For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.393 Violation of act by employer; civil action; fine.

Sec. 13. (1) If any employer violates this act, the employee affected by the violation, at any time within 3 years, may:

(a) Bring a civil action for the recovery of the difference between the amount paid and the amount that, but for the violation, would have been paid the employee under this act and an equal additional amount as liquidated damages together with costs and such reasonable attorney's fees as may be allowed by the court.

(b) File a claim with the commissioner who shall investigate the claim.

(2) If the commissioner determines there is reasonable cause to believe that the employer has violated this act and the commissioner is subsequently unable to obtain voluntary compliance by the employer within a reasonable period of time, the commissioner shall bring a civil action under the procedures and remedies as provided in subsection (1)(a). The commissioner may investigate and file a civil action under subsection (1)(a) on behalf of all employees of that employer who are similarly situated at the same work site and who have not brought a civil action under subsection (1)(a). A contract or agreement between the employer and the employee or any acceptance of a lesser wage by the employee is not a bar to the action.

(3) In addition to bearing liability for civil remedies described in this section, an employer who fails to pay the minimum hourly wage in violation of this act, or who violates a provision of section 4a governing an employee's compensatory time, is subject to a civil fine of not more than \$1,000.00.

History: 1964, Act 154, Eff. Aug. 28, 1964;—Am. 1966, Act 269, Imd. Eff. July 12, 1966;—Am. 1997, Act 1, Imd. Eff. Mar. 12, 1997.

Compiler's note: For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.394 Applicability of act; scope.

Sec. 14. (1) This act does not apply to an employer who is subject to the minimum wage provisions of the fair labor standards act of 1938, 29 USC 201 to 219, unless those federal minimum wage provisions would

result in a lower minimum hourly wage than provided in this act. Each of the following applies to an employer who is subject to this act only by application of this subsection:

(a) Section 4a does not apply.

(b) This act does not apply to an employee who is exempt from the minimum wage requirements of the fair labor standards act of 1938, 29 USC 201 to 219.

(2) Notwithstanding subsection (1), an employee shall be paid in accordance with the minimum wage and overtime compensation requirements of sections 4 and 4a if the employee meets either of the following conditions:

(a) Is employed in domestic service employment to provide companionship services as defined in 29 CFR 552.6 for individuals who, because of age or infirmity, are unable to care for themselves and is not a live-in domestic service employee as described in 29 CFR 552.102.

(b) Is employed to provide child care, but is not a live-in domestic service employee as described in 29 CFR 552.102. However, the requirements of sections 4 and 4a do not apply if the employee meets all of the following conditions:

(i) Is under the age of 18.

(ii) Provides services on a casual basis as described in 29 CFR 552.5.

(iii) Provides services that do not regularly exceed 20 hours per week, in the aggregate.

(3) This act does not apply to persons employed in summer camps for not more than 4 months or to employees who are covered under section 14 of the fair labor standards act of 1938, 29 USC 214.

(4) This act does not apply to agricultural fruit growers, pickle growers and tomato growers, or other agricultural employers who traditionally contract for harvesting on a piecework basis, as to those employees used for harvesting, until the board has acquired sufficient data to determine an adequate basis to establish a scale of piecework and determines a scale equivalent to the prevailing minimum wage for that employment. The piece rate scale shall be equivalent to the minimum hourly wage in that, if the payment by unit of production is applied to a worker of average ability and diligence in harvesting a particular commodity, he or she receives an amount not less than the hourly minimum wage.

(5) Notwithstanding any other provision of this act, subsection (1)(a) and (b) and subsection (2) do not deprive an employee or any class of employees of any right that existed on September 30, 2006 to receive overtime compensation or to be paid the minimum wage.

History: 1964, Act 154, Eff. Aug. 28, 1964;—Am. 1965, Act 296, Imd. Eff. July 22, 1965;—Am. 1966, Act 269, Imd. Eff. July 12, 1966;—Am. 1969, Act 160, Imd. Eff. Aug. 5, 1969;—Am. 1998, Act 37, Imd. Eff. Mar. 18, 1998;—Am. 2006, Act 373, Eff. Oct. 1, 2006.

Compiler's note: For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Administrative rules: R 408.701 et seq. of the Michigan Administrative Code.

408.395 Discrimination against employee serving on or testifying to deviation board; penalty.

Sec. 15. Any employer who discharges or in any other manner discriminates against any employee because the employee has served or is about to serve on the wage deviation board or has testified or is about to testify before the board, or because the employer believes that the employee may serve on the board or may testify before the board or in any investigation under the provisions of this act, and any person who violates any provision of this act or of any regulation or order issued under this act, is guilty of a misdemeanor.

History: 1964, Act 154, Eff. Aug. 28, 1964.

Compiler's note: For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.396 Discharge of employees within ten weeks; misdemeanor.

Sec. 16. Any employer who consistently discharges employees within 10 weeks of their employment and replaces the discharged employees without work stoppage is presumed to have discharged them to evade payment of the wage rates established in this act and shall be guilty of a misdemeanor.

History: 1964, Act 154, Eff. Aug. 28, 1964;—Am. 1966, Act 269, Eff. Mar. 1, 1967.

Compiler's note: For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, Rendered Friday, January 22, 2010

transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.397 Discrimination based on sex.

Sec. 17. (1) An employer having employees subject to the provisions of this act shall not discriminate between employees within an establishment on the basis of sex by paying wages to employees in the establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in the establishment for equal work on jobs, the performance of which requires equal skill, effort and responsibility and which are performed under similar working conditions, except where the payment is made pursuant to (a) a seniority system; (b) a merit system; (c) a system which measures earnings by quantity or quality of production; (d) a differential based on a factor other than sex.

(2) An employer who is paying a wage differential in violation of this section shall not reduce the wage rate of an employee in order to comply with the provisions of this section.

(3) For purposes of administration and enforcement, any amounts owing to an employee which have been withheld in violation of this section shall be deemed to be unpaid minimum wages under this act.

History: Add. 1971, Act 62, Eff. Mar. 30, 1972.

Compiler's note: For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.398 Massage establishment; violation by employer as misdemeanor; penalty.

Sec. 18. An employer operating a massage establishment as defined in section 2 of Act No. 251 of the Public Acts of 1974, as amended, being section 388.1852 of the Michigan Compiled Laws, who violates this act is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year, or a fine of not more than \$1,000.00, or both.

History: Add. 1980, Act 97, Imd. Eff. Apr. 17, 1980.

Compiler's note: In this section, "section 388.1852" evidently should read "section 338.1852".

For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

LEGAL DAY'S WORK
Act 137 of 1885

AN ACT making 10 hours a legal day's work.

History: 1885, Act 137, Eff. Sept. 19, 1885.

The People of the State of Michigan enact:

408.401 Legal work day; overtime.

Sec. 1. That in all factories, workshops, salt blocks, saw-mills, logging or lumber camps, booms or drives, mines or other places used for mechanical, manufacturing, or other purposes within the state of Michigan, where men or women are employed, 10 hours per day shall constitute a legal day's work; and any proprietor, stockholder, manager, clerk, foreman, or other employers of labor who shall require any person or persons in their employ to perform more than 10 hours per day, shall be compelled to pay such employes for all overtime or extra hours at the regular per diem rate, unless there be an agreement to the contrary.

History: 1885, Act 137, Eff. Sept. 19, 1885;—How. 1997a-5;—CL 1897, 5453;—CL 1915, 5587;—CL 1929, 8486;—CL 1948, 408.401.

408.402 Legal work day; nonspecific contracts.

Sec. 2. That in all contracts, engagements, or agreements to labor in any mechanical, manufacturing, or other labor calling, where such contracts or agreements are silent, or no express conditions specified, 10 hours shall constitute a day's work, and the contract or agreement shall be so construed.

History: 1885, Act 137, Eff. Sept. 19, 1885;—How. 1997a-6;—CL 1897, 5454;—CL 1915, 5588;—CL 1929, 8487;—CL 1948, 408.402.

408.403 Invalidating provisions of preceding section as misdemeanor; penalty; prosecution.

Sec. 3. Any individual, firm, agent of any corporation, or other employers of labor who shall take any unlawful advantage of any person or persons in their employ, or seeking employment, because of their poverty or misfortune, to invalidate any of the provisions of the preceding section, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$5.00, nor more than \$50.00 for each offense, and it shall be the duty of the prosecuting attorney of the county in which such offense was committed, upon receiving complaint, to prosecute all such cases in the name of the people of the state of Michigan.

History: 1885, Act 137, Eff. Sept. 19, 1885;—How. 1997a-7;—CL 1897, 5455;—CL 1915, 5589;—CL 1929, 8488;—CL 1948, 408.403;—Am. 1990, Act 223, Imd. Eff. Oct. 8, 1990.

408.404 Fines; disposition.

Sec. 4. All fines collected for violation of this act shall be turned over to the school board, or board of education of the city or township wherein such fine may be collected, and the same shall by them be disbursed for and in benefit of the public schools.

History: 1885, Act 137, Eff. Sept. 19, 1885;—How. 1997a-8;—CL 1897, 5456;—CL 1915, 5590;—CL 1929, 8489;—CL 1948, 408.404.

408.405 Construction of act as to exempt employees.

Sec. 5. Nothing in this act shall be construed to apply to domestic or farm laborers, or other laborers who agree to work more than 10 hours per day.

History: 1885, Act 137, Eff. Sept. 19, 1885;—How. 1997a-9;—CL 1897, 5457;—CL 1915, 5591;—CL 1929, 8490;—CL 1948, 408.405.

RAILROAD EMPLOYEES; DAY'S LABOR
Act 177 of 1893

408.441-408.444 Repealed. 1969, Act 289, Imd. Eff. Aug. 11, 1969.

MOTORMAN OR CONDUCTOR; WORKING DAYS
Act 361 of 1919

408.461, 408.462 Repealed. 1969, Act 147, Eff. Mar. 20, 1970.

PAYMENT OF WAGES AND FRINGE BENEFITS

Act 390 of 1978

AN ACT to regulate the time and manner of payment of wages and fringe benefits to employees; to prescribe rights and responsibilities of employers and employees, and the powers and duties of the department of labor; to require keeping of records; to provide for settlement of disputes regarding wages and fringe benefits; to prohibit certain practices by employers; to prescribe penalties and remedies; and to repeal certain acts and parts of acts.

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978;—Am. 1982, Act 524, Eff. Mar. 30, 1983.

The People of the State of Michigan enact:

408.471 Definitions.

Sec. 1. As used in this act:

- (a) "Department" means the department of labor.
- (b) "Employ" means to engage or permit to work.
- (c) "Employee" means an individual employed by an employer.
- (d) "Employer" means an individual, sole proprietorship, partnership, association, or corporation, public or private; this state or an agency of this state; a city, county, village, township, school district, or intermediate school district; an institution of higher education; or an individual acting directly or indirectly in the interest of an employer who employs 1 or more individuals.
- (e) "Fringe benefits" means compensation due an employee pursuant to a written contract or written policy for holiday, time off for sickness or injury, time off for personal reasons or vacation, bonuses, authorized expenses incurred during the course of employment, and contributions made on behalf of an employee.
- (f) "Wages" means all earnings of an employee whether determined on the basis of time, task, piece, commission, or other method of calculation for labor or services except those defined as fringe benefits under subdivision (e) above.

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.472 Payment of wages; time; regularly scheduled weekly or biweekly payday; monthly payday; overtime earnings during month of December; frequency of wage payments.

Sec. 2. (1) An employer, except an employer of an individual who harvests crops by hand as provided in subsection (2), shall pay the following to each employee:

- (a) On or before the first day of each calendar month, the wages earned during the first 15 days of the preceding calendar month.
- (b) On or before the fifteenth day of each calendar month, the wages earned during the preceding calendar month from the sixteenth day through the last day.
- (2) An employer shall pay to each individual engaged in any phase of the hand harvesting of crops all wages earned in a week on or before the second day following the work week unless another method of payment is agreed upon by written contract.
- (3) An employer who has established a regularly scheduled weekly or biweekly payday shall be deemed to be in compliance with subsection (1) provided that:
 - (a) Wages are paid to the employee on the established regularly recurring payday; and
 - (b) Such payday occurs on or before the fourteenth day following the end of the work period in which the wages are earned.
- (4) An employer who establishes a monthly payday shall be deemed to be in compliance with subsection (1) provided that the employer pays to the employee on or before the first day of each calendar month all wages earned during the preceding calendar month.

(5) In the case of employees' overtime earnings earned during the month of December which would in

compliance with this section be paid to the employee after the sixteenth of December, an employer will be deemed to be in compliance with this section provided the employer meets all of the following:

(a) Employees receive all their wages, except overtime, for the month of December on or before the employees' regularly scheduled payday;

(b) And all overtime wages earned during the month of December are paid on or before the next regularly scheduled payday following the payday in which the overtime would otherwise be paid.

(6) An employer may pay wages more often than required by this section.

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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408.473 Payment of fringe benefits; terms.

Sec. 3. An employer shall pay fringe benefits to or on behalf of an employee in accordance with the terms set forth in the written contract or written policy.

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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408.474 Withholding payment of compensation due as fringe benefit to be paid at termination date.

Sec. 4. An employer shall not withhold a payment of compensation due an employee as a fringe benefit to be paid at a termination date unless the withholding is agreed upon by written contract or a signed statement obtained with the full and free consent of the employee without intimidation or fear of discharge for refusing to agree to the withholding of the benefit.

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978;—Am. 1978, Act 602, Imd. Eff. Jan. 4, 1979.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.475 Payment of wages to employee voluntarily leaving employment; payment of wages to employee discharged from employment; exception.

Sec. 5. (1) An employer shall pay to an employee voluntarily leaving employment all wages earned and due, as soon as the amount can with due diligence be determined. However, an employer shall pay all wages earned and due to an employee engaged in any phase of the hand harvesting of crops as soon as the amount can, with due diligence, be determined, but, in any event, not later than 3 days after the employee's voluntary termination of employment.

(2) An employer shall immediately pay to an employee who has been discharged from employment all wages earned and due, as soon as the amount can with due diligence be determined.

(3) This section shall not apply to an employee working under contract who either voluntarily leaves employment or is discharged from employment if the amount due cannot be determined until the termination of the contract. In such cases, the employer shall pay to the employee under the provisions of section 2 all wages earned by the employee as nearly as they can be estimated. Final payment shall be made in full at the termination of the contract.

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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408.476 Wages; payment methods; deposit of employee's wages in bank, credit union, or savings and loan association; issuance of payroll debit card; consent; fees or costs.

Sec. 6. (1) An employer or agent of an employer may pay wages to an employee by any of the following methods:

(a) Payment in United States currency.

(b) Payment by a negotiable check or draft payable on presentation at a financial institution or other established place of business without discount in United States currency.

(c) Direct deposit or electronic transfer to the employee's account at a financial institution.

(d) Issuance of a payroll debit card to the employee. As used in this section, "payroll debit card" means a stored-value debit card that provides an employee access to his or her wages, for withdrawal or transfer by the employee, through a network of automatic teller machines. The term includes cards commonly known as payroll debit cards, payroll cards, and paycards.

(2) Except as provided in section 283a of the management and budget act, 1984 PA 431, MCL 18.1283a, an employer or agent of an employer shall not deposit an employee's wages in a bank, credit union, or savings and loan association without the full, free, and written consent of the employee, obtained without intimidation, coercion, or fear of discharge or reprisal for refusal to permit the deposit.

(3) An employer or agent of an employer shall not issue a payroll debit card to an employee under subsection (1)(d) without the full, free, and written consent of the employee, obtained without intimidation, coercion, or fear of discharge or reprisal for refusal to accept the payroll debit card. However, an employer paying wages by payroll debit card to 1 or more of its employees as of January 1, 2005 may pay wages to any of its employees by payroll debit card without obtaining the consent described in this subsection.

(4) An employer shall not require an employee to pay any fees or costs incurred by the employer in connection with paying wages or establishing a process for paying wages under subsection (1)(c) or (d).

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978;—Am. 2004, Act 534, Imd. Eff. Jan. 3, 2005.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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408.477 Deductions from wages.

Sec. 7. (1) Except for those deductions required or expressly permitted by law or by a collective bargaining agreement, an employer shall not deduct from the wages of an employee, directly or indirectly, any amount including an employee contribution to a separate segregated fund established by a corporation or labor organization under section 55 of the Michigan campaign finance act, Act No. 388 of the Public Acts of 1976, being section 169.255 of the Michigan Compiled Laws, without the full, free, and written consent of the employee, obtained without intimidation or fear of discharge for refusal to permit the deduction.

(2) Except as provided in this subsection and subsection (4), a deduction for the benefit of the employer

requires written consent from the employee for each wage payment subject to the deduction, and the cumulative amount of the deductions shall not reduce the gross wages paid to a rate less than minimum rate as defined in the minimum wage law of 1964, Act No. 154 of the Public Acts of 1964, being sections 408.381 to 408.398 of the Michigan Compiled Laws. A nonprofit organization shall obtain a written consent from an employee for deductions to that nonprofit organization that qualify as charitable contributions under federal law. However, this subsection does not require the nonprofit organization to obtain from an employee a separate written consent for each subsequent paycheck from which deductions that qualify as charitable contributions that benefit the employer are made. An employee at any time may rescind in writing his or her authorization to have charitable contributions deducted from his or her paycheck. As used in this subsection, "nonprofit organization" means an organization that is exempt from taxation under section 501(c)(3) of the internal revenue code.

(3) Each deduction from the wages of an employee shall be substantiated in the records of the employer and shall be identified as pertaining to an individual employee. Prorating of deductions between 2 or more employees is not permitted.

(4) Within 6 months after making an overpayment of wages or fringe benefits that are paid directly to an employee, an employer may deduct the overpayment from the employee's regularly scheduled wage payment without the written consent of the employee if all of the following conditions are met:

(a) The overpayment resulted from a mathematical miscalculation, typographical error, clerical error, or misprint in the processing of the employee's regularly scheduled wages or fringe benefits.

(b) The miscalculation, error, or misprint described in subdivision (a) was made by the employer, the employee, or a representative of the employer or employee.

(c) The employer provides the employee with a written explanation of the deduction at least 1 pay period before the wage payment affected by the deduction is made.

(d) The deduction is not greater than 15% of the gross wages earned in the pay period in which the deduction is made.

(e) The deduction is made after the employer has made all deductions expressly permitted or required by law or a collective bargaining agreement, and after any employee-authorized deduction.

(f) The deduction does not reduce the regularly scheduled gross wages otherwise due the employee to a rate that is less than the greater of either of the following:

(i) The minimum rate as prescribed by subsection (2).

(ii) The minimum rate as prescribed by the fair labor standards act of 1938, chapter 676, 52 Stat. 1060, 29 U.S.C. 201 to 216 and 217 to 219.

(5) An employee who believes his or her employer has violated subsection (4) may file a complaint with the department within 12 months after the date of the alleged violation.

(6) As used in this section, "employer" means an individual, sole proprietorship, partnership, association, or corporation, public or private, this state or an agency of this state, a city, county, village, township, school district, or intermediate school district, an institution of higher education, or an individual acting directly or indirectly in the interest of an employer who employs 1 or more individuals.

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978;—Am. 1993, Act 124, Imd. Eff. July 21, 1993;—Am. 1995, Act 207, Imd. Eff. Nov. 29, 1995;—Am. 1995, Act 278, Eff. Mar. 28, 1996.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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408.478 Fee, gift, tip, gratuity, or other remuneration or consideration, or contribution to charitable, social, or beneficial purpose, as condition of employment or continuation of employment.

Sec. 8. (1) An employer, agent or representative of an employer, or other person having authority from the employer to hire, employ, or direct the services of other persons in the employment of the employer shall not demand or receive, directly or indirectly from an employee, a fee, gift, tip, gratuity, or other remuneration or consideration, as a condition of employment or continuation of employment. This subsection does not apply to fees collected by an employment agency licensed under the laws of this state.

(2) Except for a contribution required or expressly permitted by law or by a collective bargaining agreement, an employer shall not require an employee or a person seeking employment to contribute directly or indirectly to a charitable, social, or beneficial purpose as a condition of employment or continuation of employment.

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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408.479 Records and statements; rules.

Sec. 9. (1) An employer shall maintain a record for each employee which indicates the employee's name, address, birth date, occupation or classification in which employed, total basic rate of pay, total hours worked in each pay period, total wages paid each pay period, a separate itemization of deductions and a listing or itemization of fringe benefits. In the case of an employer who has a group of 10 or more employees who have identical fringe benefits, 1 central itemization or listing may be kept for each group, providing the record identifies what group they belong to.

(2) An employer shall furnish each employee at the time of payment of wages a statement of the hours worked by the employee, the gross wages paid, identification of the pay period for which payment is being made, a separate itemization of deductions, and for each hand harvester paid on a piece work basis furnish a statement of the total number of units harvested by the employee.

(3) An employer shall maintain the records required under this section for not less than 3 years. Those records shall be open to inspection by the director of labor or an authorized representative of the director at any reasonable time.

(4) Employers need not maintain payroll records indicating the total hours worked by, or furnish wage statements of hours worked by:

(a) An employee employed in a bona fide executive, administrative, or professional capacity, including an employee employed in the capacity of academic administrative personnel or teacher in an elementary or secondary school, except that an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in the employee's workweek which the employee devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40% of the employee's hours in the workweek are devoted to those activities.

(b) An individual who holds a public elective office.

(c) A political appointee of a person holding public elective office or a political appointee of a public body.

(5) The director of labor shall promulgate rules pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws, to define the terms used in subsection (4).

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978;—Am. 1978, Act 602, Imd. Eff. Jan. 4, 1979.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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Administrative rules: R 408.9001 and R 408.9002 et seq. of the Michigan Administrative Code.

408.480 Payment of wages and fringe benefits on behalf of deceased employee; discharge and release of employer.

Sec. 10. (1) An employer shall pay fringe benefits pursuant to this section on behalf of a deceased

employee as designated by the terms set forth in the written contract, written policy, or written plan.

(2) Except as provided in subsection (3), an employer shall pay the wages and fringe benefits not paid in accordance with subsection (1) due a deceased employee to 1 or more of the following persons in the priority listed:

- (a) The deceased employee's surviving spouse.
- (b) The deceased employee's surviving children.
- (c) The deceased employee's surviving mother or father.
- (d) The deceased employee's surviving sister or brother.

(3) If the employee has established a designee or designees by a signed statement filed with the employer before the employee's death and letters of administration are not required to be issued for the estate of the deceased employee, the employer shall make those payments to the designee or designees in the signed statement.

(4) Payment under this section shall be a full discharge and release of the employer from the wages and fringe benefits due and owing the deceased employee.

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978;—Am. 1978, Act 602, Imd. Eff. Jan. 4, 1979.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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408.481 Complaint; filing; form; notice to employer; investigation; informal resolution of dispute; notice to employer and employee; request for review; oaths and affirmations; subpoena; witnesses; evidence; parties to proceeding; appointment and duties of hearings officer; hearing; determination; judicial review; venue.

Sec. 11. (1) An employee who believes that his or her employer has violated this act may file a written complaint with the department within 12 months after the alleged violation. A complaint filed under section 13(2) shall be filed within 30 days after the alleged violation occurs. Bilingual complaint forms shall be provided by the department in those areas where substantial numbers of non-English speaking employees are employed.

(2) Within a reasonable time after a complaint is filed the department shall notify the employer and investigate the claim and shall attempt to informally resolve the dispute.

(3) If the department is unable to informally resolve the dispute, the department shall notify the employer and employee within 90 days after the complaint is filed. The notification shall include a determination of the merits of the complaint and shall cite the specific violation, if any, wages and fringe benefits due, and specific penalties assessed.

(4) The employer or employee may request a review of the department's determination within 14 days after notification is issued. If a request for a review by either the employer or employee is not received by the department within 14 days, in the absence of a showing of good cause for a late request, the department's determination is final.

(5) For the purpose of an investigation or proceeding under this act, the director of labor or an authorized representative of the director may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of records or other documents which the department considers relevant or material to the inquiry.

(6) The employee, employer, and the department shall be parties to a proceeding before a hearings officer brought pursuant to this section.

(7) The director shall appoint hearings officers to make determinations in proceedings brought pursuant to this section. All proceedings in a hearing shall be conducted pursuant to the procedures applicable to the trial of contested cases under Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws. The hearings officer shall affirm, modify, or rescind the order of the department and may assess costs as provided in section 18(3).

(8) The hearings officer shall issue a determination which constitutes a final disposition of the proceedings to each party within 30 days after the conclusion of the hearing. The determination of the hearings officer

shall become the final agency order upon receipt by the parties.

(9) A party to the proceeding may obtain judicial review of the determination of the hearings officer pursuant to Act No. 306 of the Public Acts of 1969, as amended. Venue for an appeal under this act shall only be in the circuit where the employee is a resident, where the employment occurred, or where the employer has a principal place of business.

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978;—Am. 1978, Act 602, Imd. Eff. Jan. 4, 1979.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.481a Reciprocal agreements.

Sec. 11a. The director of the department may enter into reciprocal agreements with other states, Canada, or a Canadian province or territory for the collection of claims for wages, fringe benefits, and penalties assessed under section 18.

History: Add. 1996, Act 215, Imd. Eff. May 28, 1996;—Am. 2001, Act 170, Imd. Eff. Nov. 30, 2001.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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408.482 Rules.

Sec. 12. The department may promulgate rules pursuant to Act No. 306 of the Public Acts of 1969, as amended, to implement and administer this act.

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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Administrative rules: R 408.9001; R 408.9002 et seq.; and R 408.22951 et seq. of the Michigan Administrative Code.

408.483 Discrimination; complaint; investigation; rehiring or reinstatement of employee with back pay; review of determination.

Sec. 13. (1) An employer shall not discharge an employee or discriminate against an employee because the employee filed a complaint, instituted or caused to be instituted a proceeding under or regulated by this act, testified or is about to testify in a proceeding, or because of the exercise by the employee on behalf of an employee or others of a right afforded by this act.

(2) An employee who believes that he or she is discharged or otherwise discriminated against by an employer in violation of this section may file a complaint with the department alleging the discrimination within 30 days after the violation occurs. Upon receipt of the complaint, the department shall cause an investigation to be made. If, upon the investigation, the department determines that this section was violated, the department shall order the rehiring or reinstatement of an employee to his or her former position with back pay.

(3) An employer may seek review of the department's determination by following the procedure provided in section 11(4) to (9).

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978;—Am. 1978, Act 602, Imd. Eff. Jan. 4, 1979.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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408.483a Prohibited conduct.

Sec. 13a. (1) An employer shall not do any of the following:

(a) Require as a condition of employment nondisclosure by an employee of his or her wages.

(b) Require an employee to sign a waiver or other document which purports to deny an employee the right to disclose his or her wages.

(c) Discharge, formally discipline, or otherwise discriminate against for job advancement an employee who discloses his or her wages.

History: Add. 1982, Act 524, Eff. Mar. 30, 1983.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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408.484 Violation as misdemeanor.

Sec. 14. An employer who violates this act, including failure to pay the wages and fringe benefits due an employee as provided in this act, is guilty of a misdemeanor.

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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408.485 Failure to pay wages and fringe benefits as misdemeanor; penalty.

Sec. 15. An employer who, with intent to defraud, fails to make payment of the wages and fringe benefits due an employee as provided in this act, is guilty of a misdemeanor, punishable by a fine of not more than \$1,000.00, or imprisonment for not more than 1 year, or both.

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services,

transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.486 Issuance of check or other order for payment of wages; violation; penalty; prima facie evidence.

Sec. 16. (1) An employer who issues a check or other order for the payment of wages and who, at the time of issuance, knows or should know that the check or other order shall not be paid, is guilty of a misdemeanor, punishable by a fine of not more than \$1,000.00, or imprisonment for not more than 1 year, or both.

(2) Any of the following is prima facie evidence that the person at the time of issuance of the check or other order for the payment of wages, knew or should have known it should not be paid:

(a) Proof that, at the time of issuance, there was not an account with the drawee.

(b) Proof that, at the time of issuance, there were not sufficient funds or credit with the drawee and that the employer failed within 5 days after receiving notice of nonpayment or dishonor to pay the check or other order.

(c) Proof that even though presentment was made within a reasonable time, the employer did not have sufficient funds or credit with the drawee, and failed within 5 days after receiving notice of nonpayment or dishonor to pay the check or other order.

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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408.487 Department as trustee for employee.

Sec. 17. The department shall be the trustee for the employee in proceedings under this act, and shall distribute and account for funds collected.

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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408.488 Violations; ordering payments; civil penalty.

Sec. 18. (1) The department shall order an employer who violates section 2, 3, 4, 5, 6, 7, or 8 to pay the following:

(a) Wages due to the employee.

(b) Fringe benefits due to or on the behalf of the employee in accordance with the terms set forth in the written contract or written policy.

(c) A penalty at the rate of 10% annually on the wages and fringe benefits due beginning at the time the employer is notified that a complaint has been filed and ending when payment is made.

(2) The department may order an employer who violates section 2, 3, 4, 5, 6, 7, or 8 to pay to the employee exemplary damages of not more than twice the amount of the wages and fringe benefits which were due, if the violation is flagrant or repeated.

(3) The department may order an employer who violates section 2, 3, 4, 5, 6, 7, or 8 to pay attorney costs, hearing costs, and transcript costs.

(4) The department may assess a civil penalty of not more than \$1,000.00 against an employer who violates this act, which civil penalty shall be credited to the general fund of this state.

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978;—Am. 1978, Act 602, Imd. Eff. Jan. 4, 1979.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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408.489 Civil action.

Sec. 19. The director of labor shall initiate, in the county where the violation occurred, in the county of Ingham, or in the county where the employer has its principal office, the civil action necessary to enforce an order of the department which has become a final agency order as prescribed in this act.

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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408.490 Repeal of MCL 408.501 to 408.506, 408.521 to 408.525a, and 408.561 to 408.563.

Sec. 20. Act No. 221 of the Public Acts of 1897, being sections 408.561 to 408.563 of the Compiled Laws of 1970; Act No. 62 of the Public Acts of 1925, being sections 408.521 to 408.525a of the Compiled Laws of 1970; and Act No. 224 of the Public Acts of 1935, as amended, being sections 408.501 to 408.506 of the Compiled Laws of 1970, are repealed.

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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WAGE CLAIMS AND LIENS Act 224 of 1935

408.501-408.506 Repealed. 1978, Act 390, Imd. Eff. Aug. 1, 1978.

DEBTS OWING TO OR FOR BENEFIT OF EMPLOYEES
Act 213 of 1966

AN ACT to give priority to certain debts owing to or for the benefit of employees.

History: 1966, Act 213, Eff. Mar. 10, 1967.

The People of the State of Michigan enact:

408.511 Business suspended by action of creditors or placed in custody of receiver or trustee; debts owing to or for benefit of employees as preferred claims; preferred creditors; contest; processing claim or reducing claim to judgment.

Sec. 1. When the business of a person or entity is suspended by the action of creditors, or is placed in the custody of a receiver or trustee, debts owing to or for the benefit of employees of the business, other than officers or directors of the business, which have accrued by reason of their employment, including amounts payable to third persons on account of health, welfare, pension, or profit sharing plans for the benefit of employees, are preferred claims. Such employees or trustees on their behalf are preferred creditors and shall be first paid in full before other unsecured creditors are paid. An interested person may contest any such claim by filing exceptions to it, supported by affidavit, with the officer having the custody of such property. The claim shall be processed or reduced to judgment in accordance with law.

History: 1966, Act 213, Eff. Mar. 10, 1967;—Am. 1983, Act 98, Imd. Eff. June 23, 1983.

408.512 Statement of preferred claim; filing, contents, attachments; payment.

Sec. 2. An employee or other person on his behalf entitled to preference hereunder shall file a statement under oath showing the amount due, the period during which such amount accrued and shall attach to such claim any written contract of employment and any written agreement governing the compensation of such employee, including the trust agreement under which any trustee makes claim, to the officer, person or court charged with such property, within 30 days after the creditor's action or placing of the business in the custody of a receiver or trustee. The person or court receiving such statement shall pay the amount of such claim when allowed to the person entitled thereto.

History: 1966, Act 213, Eff. Mar. 10, 1967.

PAYMENT OF WAGES
Act 62 of 1925

408.521-408.525a Repealed. 1978, Act 390, Imd. Eff. Aug. 1, 1978.

PAYMENT OF WAGES
Act 59 of 1913

408.541-408.544 Repealed. 1970, Act 77, Imd. Eff. July 16, 1970.

PREVAILING WAGES ON STATE PROJECTS Act 166 of 1965

AN ACT to require prevailing wages and fringe benefits on state projects; to establish the requirements and responsibilities of contracting agents and bidders; and to prescribe penalties.

History: 1965, Act 166, Eff. Mar. 31, 1966.

The People of the State of Michigan enact:

408.551 Definitions.

Sec. 1. As used in this act:

(a) "Construction mechanic" means a skilled or unskilled mechanic, laborer, worker, helper, assistant, or apprentice working on a state project but shall not include executive, administrative, professional, office, or custodial employees.

(b) "State project" means new construction, alteration, repair, installation, painting, decorating, completion, demolition, conditioning, reconditioning, or improvement of public buildings, schools, works, bridges, highways, or roads authorized by a contracting agent.

(c) "Contracting agent" means any officer, school board, board or commission of the state, or a state institution supported in whole or in part by state funds, authorized to enter into a contract for a state project or to perform a state project by the direct employment of labor.

(d) "Commissioner" means the department of labor.

(e) "Locality" means the county, city, village, township, or school district in which the physical work on a state project is to be performed.

History: 1965, Act 166, Eff. Mar. 31, 1966;—Am. 1978, Act 100, Eff. Mar. 30, 1979.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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408.552 Contracts for state projects; minimum wage provisions, exceptions.

Sec. 2. Every contract executed between a contracting agent and a successful bidder as contractor and entered into pursuant to advertisement and invitation to bid for a state project which requires or involves the employment of construction mechanics, other than those subject to the jurisdiction of the state civil service commission, and which is sponsored or financed in whole or in part by the state shall contain an express term that the rates of wages and fringe benefits to be paid to each class of mechanics by the bidder and all of his subcontractors, shall be not less than the wage and fringe benefit rates prevailing in the locality in which the work is to be performed. Contracts on state projects which contain provisions requiring the payment of prevailing wages as determined by the United States secretary of labor pursuant to the federal Davis-Bacon act (United States code, title 40, section 276a et seq) or which contain minimum wage schedules which are the same as prevailing wages in the locality as determined by collective bargaining agreements or understandings between bona fide organizations of construction mechanics and their employers are exempt from the provisions of this act.

History: 1965, Act 166, Eff. Mar. 31, 1966.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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408.553 Prevailing wage and fringe benefit rates; schedule as part of specifications and bid form.

Sec. 3. A contracting agent, before advertising for bids on a state project, shall have the commissioner determine the prevailing rates of wages and fringe benefits for all classes of construction mechanics called for in the contract. A schedule of these rates shall be made a part of the specifications for the work to be performed and shall be printed on the bidding forms where the work is to be done by contract. If a contract is not awarded or construction undertaken within 90 days of the date of the commissioner's determination of prevailing rates of wages and fringe benefits, the commissioner shall make a redetermination before the contract is awarded.

History: 1965, Act 166, Eff. Mar. 31, 1966.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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408.554 Prevailing wages and fringe benefit rates; establishment; public hearings.

Sec. 4. The commissioner shall establish prevailing wages and fringe benefits at the same rate that prevails on projects of a similar character in the locality under collective agreements or understandings between bona fide organizations of construction mechanics and their employers. Such agreements and understandings, to meet the requirements of this section, shall not be controlled in any way by either an employee or employer organization. If the prevailing rates of wages and fringe benefits cannot reasonably and fairly be applied in any locality because no such agreements or understandings exist, the commissioner shall determine the rates and fringe benefits for the same or most similar employment in the nearest and most similar neighboring locality in which such agreements or understandings do exist. The commissioner may hold public hearings in the locality in which the work is to be performed to determine the prevailing wage and fringe benefit rates. All prevailing wage and fringe benefit rates determined under this section shall be filed in the office of the commissioner of labor and made available to the public.

History: 1965, Act 166, Eff. Mar. 31, 1966.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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408.555 Prevailing wage and fringe benefit rates; posting by contractors.

Sec. 5. Every contractor and subcontractor shall keep posted on the construction site, in a conspicuous place, a copy of all prevailing wage and fringe benefit rates prescribed in a contract and shall keep an accurate record showing the name and occupation of and the actual wages and benefits paid to each construction mechanic employed by him in connection with said contract. This record shall be available for reasonable inspection by the contracting agent or the commissioner.

History: 1965, Act 166, Eff. Mar. 31, 1966.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.556 Prevailing wages and fringe benefits; failure to pay, termination of contract; contractor's liability and sureties.

Sec. 6. The contracting agent, by written notice to the contractor and the sureties of the contractor known to the contracting agent, may terminate the contractor's right to proceed with that part of the contract, for which less than the prevailing rates of wages and fringe benefits have been or will be paid, and may proceed to complete the contract by separate agreement with another contractor or otherwise, and the original contractor and his sureties shall be liable to the contracting agent for any excess costs occasioned thereby.

History: 1965, Act 166, Eff. Mar. 31, 1966.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.557 Violation of act; penalty.

Sec. 7. Any person, firm or corporation or combination thereof, including the officers of any contracting agent, violating the provisions of this act is guilty of a misdemeanor.

History: 1965, Act 166, Eff. Mar. 31, 1966.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.558 Inapplicability of act.

Sec. 8. The provisions of this act shall not apply to contracts entered into or the bids made before the effective date of this act.

History: 1965, Act 166, Eff. Mar. 31, 1966.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

PAYMENT OF WAGES; SCRIPT, TOKEN, ORDER OR OTHER EVIDENCE OF INDEBTEDNESS Act 221 of 1897

408.561-408.563 Repealed. 1978, Act 390, Imd. Eff. Aug. 1, 1978.

WORKING AT POINT AWAY FROM HOME LOCALITY

Act 106 of 1903

AN ACT to prescribe the duties and liabilities of employers and employees arising from the offer and acceptance of inducements for the performance of labor or service for hire at some point away from the home locality.

History: 1903, Act 106, Eff. Sept. 17, 1903.

The People of the State of Michigan enact:

408.581 Work away from home locality; contract, terms; minors under sixteen; misrepresentation, penalty.

Sec. 1. Any person, company or corporation, or any agent or officer thereof who shall induce another person, by promise of wages or other valuable consideration, to agree to work for the person, company or corporation in whose behalf the offer of inducements is made, at a point away from his or her home locality, shall specify in writing the terms and conditions under which the said work is to be performed, the rate of wages and how, when and where said wages are agreed to be paid, and may furnish of copy of such statement of agreement to the person so induced by the promises therein to agree to work for the person, company or corporation offering said inducements: Provided, That it shall be unlawful for any person to make a tender of inducement to go away from the home locality to work, to any child under 16 years of age unless the written consent of the parents of such child has been first obtained, as well as the consent of the truant officer or county agent of the board of corrections and charities for the locality where said child belongs; and in case such consent is obtained and the child goes abroad under the influence of the inducements so offered, such child under 16 years of age shall be safely returned to its home at any time when its parents shall request, in writing, such return. Any person or any agent or officer of any corporation who shall, in offering inducements to any person to work for hire at any place apart from his or her home locality, misrepresent any of the conditions of such employment as mentioned above, shall be liable to pay to the person injured by such misrepresentation, the full amount of the damage sustained and shall be further liable to the penalties provided in section 3 of this act.

History: 1903, Act 106, Eff. Sept. 17, 1903;—CL 1915, 5580;—CL 1929, 8609;—CL 1948, 408.581.

Compiler's note: In the first sentence of this section, "furnish of copy" evidently should read "furnish a copy".

The board of corrections and charities, referred to in this section, was abolished and its powers and duties transferred to the department of social welfare by MCL 400.19. The department of social welfare was subsequently transferred to the department of social services by MCL 16.552.

408.582 Fraudulent acceptance of benefits; misdemeanor; prima facie evidence.

Sec. 2. Every person, who, with intent to defraud, shall accept or receive transportation provided by or at the instance or expense of his employer, from any point in this state to or in the direction of the place where he has contracted to perform labor for, or render services to such employer, or who shall knowingly, and with intent to defraud, accept or receive the benefit of any other pecuniary advancements made by or at the instance and cost of his employer, under an agreement on the part of such person to perform labor or render services in repayment of the cost of such transportation or of such other benefits, shall be deemed and adjudged guilty of a misdemeanor if he shall neglect or refuse to render services or perform labor of an equal value to the full amount paid for such transportation or other benefits, or shall neglect or refuse to pay such employer in money the amount paid therefor. The value of the services to be rendered, or labor to be performed shall be determined by the price agreed to be paid therefor by such employer under his contract with the employee. The failure or refusal of any such employee to perform such labor or to render such services in accordance with his contract, or to pay in money the amount paid for such transportation or other benefits, shall be prima facie evidence of his intent to defraud.

History: 1903, Act 106, Eff. Sept. 17, 1903;—CL 1915, 5581;—CL 1929, 8610;—CL 1948, 408.582.

408.583 Violation of act; penalty.

Sec. 3. Every person found guilty of violating the provisions of this act shall be punished by a fine not exceeding 25 dollars or by imprisonment of not less than 10 nor more than 60 days.

History: 1903, Act 106, Eff. Sept. 17, 1903;—CL 1915, 5582;—CL 1929, 8611;—CL 1948, 408.583.

PRIVATE EMPLOYMENT BUREAUS

Act 321 of 1929

408.601-408.624 Repealed. 1965, Act 330, Eff. Sept. 1, 1965;—1974, Act 301, Eff. July 1, 1975.

CARNIVAL-AMUSEMENT SAFETY ACT OF 1966

Act 225 of 1966

AN ACT to provide for the inspection, licensing, and regulation of carnival and amusement rides; to provide for the safety of the public using carnival and amusement rides; to create a carnival-amusement safety board in the department of licensing and regulation; to provide for the disposition of revenues; to make an appropriation; and to provide penalties for violations.

History: 1966, Act 225, Imd. Eff. July 11, 1966;—Am. 1982, Act 35, Imd. Eff. Mar. 12, 1982.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

408.651 Carnival-amusement safety act of 1966; short title.

Sec. 1. This act shall be known and may be cited as the “carnival-amusement safety act of 1966”.

History: 1966, Act 225, Imd. Eff. July 11, 1966.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

Transfer of powers: See MCL 16.486.

408.652 Definitions.

Sec. 2. As used in this act:

(a) “Carnival or amusement ride” means a device that carries or conveys passengers along, around, or over a fixed or restricted route or course for the purpose of giving its passengers amusement, pleasure, thrills, or excitement. Carnival or amusement ride does not include a hobby locomotive operating on narrow gauge tracks less than 24 inches and powered by steam, electricity, gas, or other fuel, whether or not it is operated on the owner's property.

(b) “Department” means the department of consumer and industry services.

(c) “Director” means the director of the department of consumer and industry services.

(d) “Hobby” means an interest or activity that a person pursues without compensation in his or her leisure time.

(e) “Operator” or “owner” means a person who owns or controls or has the duty to control the operation of a carnival or amusement ride and includes the state or any political subdivision of the state.

(f) “Rider” or “rider of a carnival or amusement ride” means a person waiting in the immediate vicinity of a carnival or amusement ride to get on the carnival or amusement ride, getting on a carnival or amusement ride, using a carnival or amusement ride, getting off a carnival or amusement ride, or leaving a carnival or amusement ride and still in the immediate vicinity of the carnival or amusement ride. Rider does not include an employee or agent of the operator while engaged in the duties of his or her employment.

(g) “Sign” means any symbol or language reasonably calculated to communicate information to a rider or the rider's parent or guardian, including placards, prerecorded messages, live public address, stickers, pictures, pictograms, video, verbal information, and visual signals.

(h) “Special inspector commission” means an authorization issued annually by the department that requires an operator, owner, or representative of the owner or operator to perform daily inspections of a carnival or amusement ride, to maintain a daily inspection log, and to be present on the premises where the ride is located while the ride is being operated.

History: 1966, Act 225, Imd. Eff. July 11, 1966;—Am. 1982, Act 35, Imd. Eff. Mar. 12, 1982;—Am. 1998, Act 507, Imd. Eff. Jan. 8, 1999;—Am. 2000, Act 346, Eff. Mar. 28, 2001.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

Transfer of powers: See MCL 16.732.

408.653 Carnival-amusement safety board; appointment, terms, and qualifications of members.

Sec. 3. There is created the carnival-amusement safety board to consist of 7 members. One member shall be the director of licensing and regulation. Six members shall be appointed by the governor with the advice and consent of the senate. The term of members shall be 4 years, except of the first members appointed by the

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governor, 2 shall be appointed for 2 years, 2 for 3 years, and 2 for 4 years. Of the 6 appointed members of the board, 1 shall be representative of the amusement park operators, 1 shall be representative of the carnival ride operators, 1 shall be representative of the retail merchants association, 1 shall be a licensed professional engineer, and 2 shall be representatives of the general public.

History: 1966, Act 225, Imd. Eff. July 11, 1966;—Am. 1982, Act 35, Imd. Eff. Mar. 12, 1982.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

408.654 Carnival-amusement safety board; conducting business at public meeting; quorum; meetings; notice; election of chairperson and other officers; clerical and administrative help; payment.

Sec. 4. (1) The business which the board may perform shall be conducted at a public meeting of the board held in compliance with Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. A majority of the 7 members of the board constitutes a quorum. The board shall meet not less than 2 times each year and at the call of the chairperson or by written request of not less than 3 members. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

(2) The board shall elect a chairperson and other officers it considers necessary to perform its duties between meetings and may hire necessary clerical and administrative help to be paid out of the appropriation to the board.

History: 1966, Act 225, Imd. Eff. July 11, 1966;—Am. 1978, Act 176, Imd. Eff. June 4, 1978.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

408.655 Carnival-amusement safety board; compensation and expenses.

Sec. 5. The per diem compensation of the board and the schedule for reimbursement of expenses shall be established annually by the legislature.

History: 1966, Act 225, Imd. Eff. July 11, 1966;—Am. 1975, Act 65, Imd. Eff. May 20, 1975.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

408.656 Carnival-amusement safety board; promulgation of definitions, codes, rules and regulations.

Sec. 6. The board shall promulgate and formulate definitions, codes, rules and regulations for the safe installation, repair, maintenance, use, operation and inspection of all carnival-amusement rides as the board finds necessary for the protection of the general public using carnival and amusement rides. The definitions, codes, rules and regulations shall be reasonable and based upon generally accepted engineering standards, formulas and practices and shall be issued in accordance with the provisions of Act No. 88 of the Public Acts of 1943, as amended, being sections 24.71 to 24.80 of the Compiled Laws of 1948, and subject to Act No. 197 of the Public Acts of 1952, as amended, being sections 24.101 to 24.110 of the Compiled Laws of 1948.

History: 1966, Act 225, Imd. Eff. July 11, 1966.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

Administrative rules: R 408.801 et seq. of the Michigan Administrative Code.

408.657 Director; administration and enforcement of act, codes, rules, and regulations.

Sec. 7. The director shall administer and enforce this act and all codes, rules, and regulations promulgated by the board.

History: 1966, Act 225, Imd. Eff. July 11, 1966;—Am. 1982, Act 35, Imd. Eff. Mar. 12, 1982.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

Administrative rules: R 408.801 et seq. of the Michigan Administrative Code.

408.658 Fees.

Sec. 8. (1) The department shall charge the following fees for permits to operate, annual inspections, reinspections, and special inspector commissions:

(a)	Permit to operate.....	\$ 10.00
(b)	Annual inspection:	
(i)	Kiddie rides.....	40.00
(ii)	Fixed coaster.....	90.00
(iii)	Aerial lifts.....	115.00
(iv)	Miscellaneous rides.....	50.00
(c)	Reinspection:	
(i)	Kiddie rides.....	20.00
(ii)	Fixed coaster.....	75.00
(iii)	Aerial lifts.....	75.00
(iv)	Miscellaneous rides.....	20.00
(d)	Special inspector commission.....	5.00

(2) If the fee prescribed by subsection (1) is not received by the department within 30 calendar days after notice of the amount due is given, the fee automatically shall be doubled.

(3) The department shall review the fees prescribed by subsection (1), shall report to the legislature before October 1, 1983 concerning the appropriateness of those fees, and shall make recommendations, if necessary, to reflect actual costs.

History: 1966, Act 225, Imd. Eff. July 11, 1966;—Am. 1982, Act 35, Imd. Eff. Mar. 12, 1982.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

408.659 Inspectors; appointment, qualifications.

Sec. 9. The department may hire inspectors to inspect carnival-amusement rides. The chief carnival-amusement ride inspector shall be licensed in the state as a professional engineer, in accordance with Act No. 240 of the Public Acts of 1937, as amended, being sections 338.551 to 338.576 of the Compiled Laws of 1948.

History: 1966, Act 225, Imd. Eff. July 11, 1966;—Am. 1967, Act 265, Imd. Eff. July 19, 1967.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

408.660 Carnival-amusement ride; permit requirement, application, annual inspection.

Sec. 10. No person shall operate a carnival-amusement ride without a permit issued by the director. On or before March 1 of each year an operator shall apply for a permit to the director on a form furnished by the director and containing such information as the board may require. All carnival-amusement rides shall be inspected before they are originally put into operation for the public's use and thereafter at least once every year, unless authorized to operate on a temporary permit. Carnival-amusement rides may also be inspected each time they are disassembled and reassembled.

History: 1966, Act 225, Imd. Eff. July 11, 1966.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

408.661 Permit to operate carnival-amusement ride; issuance.

Sec. 11. If, after inspection, a carnival-amusement ride is found to comply with the rules and regulations of the board, the inspector shall issue a permit to operate.

History: 1966, Act 225, Imd. Eff. July 11, 1966;—Am. 1982, Act 35, Imd. Eff. Mar. 12, 1982.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

408.662 Erection or alteration of ride; notice of intent, plans or diagrams.

Sec. 12. Before a new carnival-amusement ride is erected, or whenever any additions or alterations are made which change the structure, mechanism, classification or capacity of any carnival-amusement ride, the operator shall file with the department a notice of his intention and any plans or diagrams requested by the director.

History: 1966, Act 225, Imd. Eff. July 11, 1966.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled MCL 338.3501 of the Michigan Compiled Laws.

408.663 Order for temporary cessation of operation; unsafe condition, correction.

Sec. 13. The director or board may order, in writing, a temporary cessation of operation of a carnival-amusement ride if it has been determined after inspection to be hazardous or unsafe. Operation shall not resume until such conditions are corrected to the satisfaction of the director or board.

History: 1966, Act 225, Imd. Eff. July 11, 1966;—Am. 1967, Act 265, Imd. Eff. July 19, 1967.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

408.664 Construction of act as to existing installations.

Sec. 14. This act shall not be construed to prevent the use of any existing installation which upon inspection is found to be in a safe condition and in conformance with the rules and regulations of the board.

History: 1966, Act 225, Imd. Eff. July 11, 1966.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

408.665 Hardship cases; modification of rules and regulations, request, written authorization, record.

Sec. 15. If there are practical difficulties or unnecessary hardships for an operator to comply with the rules and regulations under this act, the director, with the approval of the board, may modify the application of such rules or regulations if the spirit of the rules and regulations shall be observed and the public safety is secure. Any operator may make a written request to the board stating his grounds and applying for such modification. Any authorization by the director and the board shall be in writing and shall describe the conditions under which the modifications are permitted. A record of all modifications shall be kept in the department and open to the public.

History: 1966, Act 225, Imd. Eff. July 11, 1966.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

408.666 Security against owner's or operator's liability for injury required; insurance or bond; local unit of government as self-insurer.

Sec. 16. A person shall not operate a carnival or amusement ride unless the owner or operator shall have obtained security against the owner's or operator's liability for injury suffered by persons riding the carnival or amusement ride by 1 of the following methods:

(a) By obtaining a policy of insurance in an amount not less than \$300,000.00 insuring the owner or operator against liability for injury suffered by persons riding the carnival or amusement ride.

(b) By obtaining a bond in an amount not less than \$300,000.00 with the aggregate amount of the surety on the bond not exceeding the face amount of the bond.

(c) An owner or operator having only 1 carnival or amusement ride which ride is designed primarily for use by children, may comply with subsections (a) and (b) by obtaining a policy of insurance or a bond in an amount not less than \$50,000.00.

(d) In the case of a local unit of government, the director of the department may authorize a local unit of government which is an owner or operator of a carnival or amusement ride to be a self-insurer upon a reasonable showing by the local unit of government owner or operator of its solvency and financial ability to pay liability claims for injury suffered by persons riding the carnival or amusement ride, in an amount not less than \$300,000.00. If the director determines it to be necessary, the director shall require the furnishing of a bond or other security in a reasonable amount.

History: 1966, Act 225, Imd. Eff. July 11, 1966;—Am. 1980, Act 103, Imd. Eff. Apr. 27, 1980.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

408.667 Temporary cessation of operations; order; duration; violation of act as misdemeanor; separate offense; exception.

Sec. 17. (1) A temporary cessation of operations of a carnival-amusement ride may be ordered by the director when the inspection of the ride has been impeded, obstructed or interfered with. The order to cease operations shall remain in effect until an inspection has been made and the ride has been found safe for use.

(2) Except for the late payment of fees as provided in section 8(2) and except as provided in subsection (3), a person who violates this act is guilty of a misdemeanor. Each day a violation occurs is a separate offense.

(3) The penalty provided in subsection (2) does not apply to the violation of this act by a rider or the rider's parent or guardian.

History: 1966, Act 225, Imd. Eff. July 11, 1966;—Am. 1967, Act 265, Imd. Eff. July 19, 1967;—Am. 1982, Act 35, Imd. Eff. Mar. 12, 1982;—Am. 2000, Act 346, Eff. Mar. 28, 2001.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.

408.668 Required conduct of rider; requirements.

Sec. 18. (1) A rider of a carnival or amusement ride shall, at a minimum, do all of the following:

(a) Obey the reasonable safety rules posted in accordance with this act and oral instructions for the carnival or amusement ride given by the operator or an employee or agent of the operator, unless the safety rules or oral instructions are contrary to the safety rules provided in this act.

(b) Refrain from acting in any manner that may cause or contribute to the injury of the rider or others, including, but not limited to, all of the following:

(i) Exceeding the limits of his or her ability.

(ii) Interfering with safety devices that are provided.

(iii) Failing to engage safety devices that are provided.

(iv) Disconnecting or disabling a safety device except at the express instruction of the operator or an employee or agent of the operator.

(v) Altering the intended speed, course, or direction of the carnival or amusement ride.

(vi) Using the controls of a carnival or amusement ride designed solely to be operated by the operator or an employee or agent of the operator.

(vii) Extending arms and legs beyond the carrier or seating area except at the express direction of the operator or an employee or agent of the operator.

(viii) Throwing, dropping, or expelling an object from or toward a carnival or amusement ride except as permitted by the operator or an employee or agent of the operator.

(ix) Getting on or off a carnival or amusement ride except at the designated time and area, unless directed by the operator or an employee or agent of the operator or in an emergency.

(x) On a carnival or amusement ride that requires the rider to control or direct his or her body or the carnival or amusement ride, not reasonably controlling the speed or direction of the carnival or amusement ride or his or her body.

(xi) Intentionally dropping, throwing, or expelling an object from a carnival or amusement ride while riding on the carnival or amusement ride.

(xii) Doing any act that interferes with the running or operation of a carnival or amusement ride, including, but not limited to, swinging or bouncing on an aerial carnival or amusement ride or attempting to contact supporting towers, machinery, guides, or guards while riding on a carnival or amusement ride.

(2) A rider of a carnival or amusement ride shall not get on or attempt to get on a carnival or amusement ride unless the rider or the rider's parent or guardian reasonably determines that, at a minimum, the rider meets all of the following requirements:

(a) He or she has sufficient knowledge to get on, use, and get off the carnival or amusement ride safely without instruction or has requested and received sufficient information to get on, use, and get off the carnival or amusement ride safely prior to getting on the carnival or amusement ride.

(b) He or she is aware of, has read, and understands any signs in the vicinity of the carnival or amusement ride and meets any posted height, medical, or other requirements.

(c) He or she knows the range and limits of his or her ability and knows the requirements of the carnival or amusement ride will not exceed those limits.

(d) He or she is not under the influence of alcohol or any drug that affects his or her ability to safely use the carnival or amusement ride or obey the posted rules or oral instructions.

(e) He or she is authorized by the operator or by an employee or agent of the operator to get on the carnival or amusement ride.

History: Add. 2000 Act 346, Eff. Mar. 28, 2001.

408.669 Rider safety responsibilities; signs.

Sec. 19. (1) An operator shall display signs indicating the applicable rider safety responsibilities provided in section 18 and the location of stations to report injuries under section 20. The signs shall be located in all of the following locations:

- (a) Each station for reporting an injury.
- (b) Each first aid station.
- (c) In addition to the locations described in subdivisions (A) and (B), the following locations:
 - (i) If there are not more than 4 entrances or exits for riders, at least 2 locations on the premises, including any entrance or exit most commonly used by riders.
 - (ii) If there are more than 4 entrances and exits for riders, at least 4 other locations on the premises, including the 4 entrances and exits most commonly used by riders.
 - (iii) At every carnival or amusement ride.

(2) In addition to the signs required under subsection (1), an operator shall post a sign at each carnival or amusement ride. The sign shall be prominently displayed at a conspicuous location, clearly visible to the public, and bold and legible in design. The sign shall include all of the following that apply:

- (a) Operational instructions.
- (b) Safety guidelines for riders.
- (c) Restrictions on the use of the carnival or amusement ride.
- (d) Behavior or activities that are prohibited.
- (e) A legend that states: "State law requires riders to obey all warnings and directions for carnival or amusement rides and behave in a manner that will not cause or contribute to the injury of themselves or others. Riders must report injuries prior to leaving the premises."

History: Add. 2000 Act 346, Eff. Mar. 28, 2001.

408.670 Injury report.

Sec. 20. (1) Before leaving the operator's premises, a rider of a carnival or amusement ride or his or her parent or guardian shall report in writing to the operator or an employee or agent of the operator, on a form provided by the operator or the employee or agent of the operator, any injury sustained on a carnival or amusement ride. The report shall include all of the following information:

- (a) The name, address, and telephone number of the injured person.
 - (b) A brief description of the incident, the injury claimed, and the location, date, and time of the injury.
 - (c) The cause of the injury, if known.
 - (d) The name, address, and telephone number of any witness to the incident.
- (2) If the rider of a carnival or amusement ride or his or her parent or guardian is unable to file a report under subsection (1) because of the severity of the rider's injuries, the rider or his or her parent or guardian shall file the report as soon as reasonably possible. The failure of a rider or his or her parent or guardian to report an injury under this section does not affect the rider's right to bring a civil action related to the incident.

History: Add. 2000 Act 346, Eff. Mar. 28, 2001.

THE PLAYGROUND EQUIPMENT SAFETY ACT

Act 16 of 1997

AN ACT to regulate the manufacturing and assembling of public playground equipment; and to provide penalties.

History: 1997, Act 16, Eff. May 1, 1998.

The People of the State of Michigan enact:

408.681 Short title.

Sec. 1. This act shall be known and may be cited as “the playground equipment safety act”.

History: 1997, Act 16, Eff. May 1, 1998.

408.682 Definitions.

Sec. 2. As used in this act:

(a) “Person” means an individual, partnership, corporation, association, governmental entity, or other legal entity.

(b) “Public playground equipment” means apparatus, including but not limited to slides, climbers, seesaws, and swings, designed for the recreational use of children and owned and operated by a local unit of government, school district, or any other governmental entity.

History: 1997, Act 16, Eff. May 1, 1998.

408.683 Public playground equipment; liability as to state civil infraction; separate civil action.

Sec. 3. (1) The standards identified in section 4 determine responsibility for a state civil infraction under this act and do not establish liability in a separate civil action that is brought to recover damages caused by the maintenance, repair, upkeep, manufacture or assembly of public playground equipment.

(2) The standards identified in section 4 shall have only the relevance as allowed by law or court rule in a separate civil action.

History: 1997, Act 16, Eff. May 1, 1998.

408.684 Public playground equipment; standards.

Sec. 4. A person who for compensation manufactures or assembles public playground equipment that fails to comply with the following standards is subject to a state civil infraction under this act:

(a) The “handbook for public playground safety” published for the U.S. consumer products safety commission, which is incorporated by reference and is based upon recommendations provided to the commission by the COMSIS corporation in March 1990 in “development of human factors criteria for playground equipment safety” by Donna Rattle, Melanie Morrison, and Neil Lerner.

(b) The “standard consumer safety performance specification for playground equipment for public use, ASTM F1487-01”, published by the American society for testing and materials, which is incorporated by reference.

History: 1997, Act 16, Eff. May 1, 1998;—Am. 1998, Act 137, Imd. Eff. June 24, 1998;—Am. 2002, Act 419, Imd. Eff. June 5, 2002

408.685 Violation of act; penalty; default; disposition of collections.

Sec. 5. (1) A person who violates this act in the manufacture of public playground equipment is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$10,000.00.

(2) A person who violates this act in the assembly of public playground equipment is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$1,000.00.

(3) A default in the payment of a civil fine or costs ordered under this act or an installment of the fine or costs may be remedied by any means authorized under the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9947.

(4) Money collected under this section shall be deposited into the children's trust fund established under section 1 of 1982 PA 249, MCL 21.171.

History: 1997, Act 16, Eff. May 1, 1998.

408.686 Public playground equipment; responsibility for maintenance, repair, and upkeep.

Sec. 6. (1) Except as otherwise provided in subsection (2), the local unit of government, school district, or governmental entity that owns and operates the public playground equipment shall be responsible for the

maintenance, repair, and upkeep of the public playground equipment according to the standards identified by this act.

(2) For the maintenance, repair, and upkeep of public playground equipment that existed before the effective date of this act, the standards required by section 4 shall apply only to the extent that such application is possible without requiring substantial alteration, removal, or replacement of the existing equipment.

History: 1997, Act 16, Eff. May 1, 1998.

408.687 Finding of responsibility; admissibility in civil action; immunity; other defenses, limitations, remedies, or rights.

Sec. 7. (1) Evidence of a finding of responsibility for a state civil infraction under this act shall not be admissible in a civil action brought to recover damages incurred as a result of the manufacture or assembly of public playground equipment.

(2) This act does not expand, restrict, or otherwise alter the immunity from liability granted by law to a local unit of government, school district, or governmental entity.

(3) This act does not limit or alter and shall be in addition to any other defenses, limitations, remedies, or rights a person may have by law.

History: 1997, Act 16, Eff. May 1, 1998.

BUILDING SAFETY COUNCIL

Act 164 of 1951

408.701-408.703 Repealed. 1963, Act 89, Eff. July 1, 1963.

CONSTRUCTION SAFETY ACT OF 1963

Act 89 of 1963

408.711-408.724 Repealed. 1974, Act 154, Eff. Jan. 1, 1975.

BOILER ACT OF 1965

Act 290 of 1965

AN ACT to regulate the use, construction, installation, and repair of certain boilers; to create a board of boiler rules; to prescribe uniform rules and regulations for certain boilers; to provide for the licensing of certain boiler inspectors, installers, and repairers and registration of certain boiler operators and stationary engineers; to provide for powers and duties for certain state agencies and officers; to provide fees for registrations, licenses, permits, inspections, and certificates; to provide penalties and remedies for the violation of this act; and to repeal acts and parts of acts.

History: 1965, Act 290, Eff. July 1, 1966;—Am. 2008, Act 159, Imd. Eff. June 11, 2008.

The People of the State of Michigan enact:

408.751 Boiler act of 1965; short title.

Sec. 1. This act shall be known and may be cited as the “boiler act of 1965”.

History: 1965, Act 290, Eff. July 1, 1966.

Compiler's note: For transfer of powers and duties relating to promulgation of rules by board of boiler rules from the department of labor to the director of the department of consumer and industry services see E.R.O. No. 1996-2, compiled at MCL 445.2001 of the Michigan Compiled Laws.

Transfer of powers: See MCL 16.485.

408.752 Definitions.

Sec. 2. As used in this act:

(a) "Antique steam boiler" means a boiler that is no longer used in production applications and is used to demonstrate the historical significance of steam boilers in American history.

(b) "Approved apprenticeship program" means a training program for boiler operators or stationary engineers certified by or meeting the standards of the United States department of labor bureau of apprenticeship training and approved by the board.

(c) "Associated auxiliaries" means equipment that is required in the operation of a boiler that includes, but is not limited to, pumps, regulators, feedwater heaters, superheaters, de-superheaters, economizers, air preheaters, draft fans, combustion and pollution control equipment, and prime movers.

(d) "Board" means the board of boiler rules created in section 3.

(e) "Boiler" means a closed vessel in which water is heated, steam is generated, steam is superheated, or a combination thereof, under pressure or vacuum by the application of heat from combustible fuels, electricity, or nuclear energy. Boiler does not include facilities of an integral part of a continuous processing unit but does include a fired unit for heating or vaporizing liquids other than water, if the unit is separate from a processing system and is complete within itself.

(f) "Boiler for agricultural purposes" means a portable boiler used in a field or similar open area for the sole purpose of operating farm equipment or farm machinery.

(g) "Boiler operator" or "stationary engineer" means a person engaged in the operation of boilers and associated auxiliaries.

(h) "Certificate inspection" means an inspection, the report of which is used by the chief inspector to decide whether a certificate, as provided by section 20, shall be issued. The certificate inspection shall be an internal inspection if construction allows; otherwise the certificate inspection shall be as complete an inspection as possible.

(i) "Director" means the director of the department of labor and economic growth or a representative designated by the director.

(j) "External inspection" means an inspection that does not involve examination of the internal surfaces of the pressure parts of the boiler.

(k) "Heating surface" means the heating surface determined by the boiler manufacturer and recorded in the manufacturer's data report or by rules established by the board for a boiler if the manufacturer's data report is not available or the boiler is not stamped with its heating surface.

(l) "High pressure, high temperature water boiler" means a water heating boiler operating at pressure exceeding 160 p.s.i.g. or temperatures exceeding 250 degrees Fahrenheit.

(m) "Low pressure boiler" means a steam boiler operated at pressures not exceeding 15 p.s.i.g., or a hot water heating boiler operated at pressures not exceeding 160 p.s.i.g. or temperatures not exceeding 250 degrees Fahrenheit.

(n) "P.S.I.G." means pounds per square inch gauge.

(o) "Power boiler" means a closed vessel in which steam or other vapor is generated at a pressure of more than 15 p.s.i.g. by the direct application of heat.

(p) "Process boiler" means a boiler operated at a pressure or temperature from which more than 10% of the boiler's capacity is used for direct steam humidification or direct process work.

(q) "Qualified technical education program" means an educational program approved by the board that has a minimum of 350 contact hours in classroom hands-on training, field training, or supervised plant visits for high pressure boiler operators. The board may establish lesser standards for an educational program for low pressure operator training or other entry level training positions only.

(r) "Qualified training program" means either of the following:

(i) An in-house training program approved by the board and offered to boiler operators and stationary engineers by an employer.

(ii) An in-house training program implemented or developed by a utility and offered to boiler operators and stationary engineers by an employer as a result of negotiations between an employer and its employees.

(s) "Rule" means a rule promulgated pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(t) "Secondhand boiler" means a boiler that has changed ownership and location after initial use.

History: 1965, Act 290, Eff. July 1, 1966;—Am. 1970, Act 103, Imd. Eff. July 23, 1970;—Am. 1980, Act 274, Imd. Eff. Oct. 8, 1980;—Am. 1986, Act 277, Imd. Eff. Dec. 19, 1986;—Am. 2004, Act 103, Imd. Eff. May 20, 2004;—Am. 2008, Act 159, Imd. Eff. June 11, 2008.

408.753 Board of boiler rules; creation; appointment, qualifications, and terms of members; removal of member; vacancy; election of officers; conducting business at public meeting; notice of meeting; quorum; effectiveness of approval, decision, or ruling; compensation and expenses.

Sec. 3. (1) There is created a board of boiler rules in the department of labor and economic growth. The board, in addition to the director, shall consist of 12 members, 11 of whom shall have substantial experience in the design, erection, fabrication, installation, operation, repair, or inspection of boilers, and 1 of whom shall represent the general public. Members shall be appointed by the governor with the advice and consent of the senate for terms of 4 years each. The governor may remove a member of the board for inefficiency or neglect of duty in office. Upon the death or incapacity of a member, the governor shall fill the vacancy for the remainder of the vacated term with a representative of the same interests with which the predecessor was identified. Of the 12 appointed members, 2 shall be representatives of owners and users of boilers within this state, 1 shall represent owners and users of power boilers operating at 1,000 p.s.i.g. or more, 2 shall be representatives of organized labor in the state engaged in the erection, fabrication, installation, operation, or repair of boilers, 1 shall be a representative of water tube boiler manufacturers doing business within this state, 1 shall be a representative of fire tube boiler manufacturers doing business within this state, 1 shall be a representative of a boiler insurance company licensed to do business within this state, 1 shall be a representative of the mechanical contractors within this state having experience in the installation, piping, or operation of boilers, 1 shall be a representative of boiler repair contractors within this state in the business of repairing boilers by welding and riveting, 1 shall be a representative of the consulting engineers within this state having boiler experience, 1 shall be a representative of antique steam boiler owners and operators, and 1 shall be a representative of the general public.

(2) Annually, at the first meeting, the board shall elect a chairperson, vice-chairperson, and secretary. The business which the board of boiler rules may perform shall be conducted at a public meeting of the board of boiler rules held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. The board shall meet not less than quarterly or more frequently at the call of the chairperson or 4 members of the board with public notice of the time, date, and place of a meeting given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275, and 10 days' notification to board members.

(3) Seven members of the board shall constitute a quorum for the transaction of business. An approval, decision, or ruling of the board is not effective unless supported by a majority of the members present.

(4) The per diem compensation of the members of the board, other than the director, and the schedule for reimbursement of expenses, shall be established annually by the legislature.

History: 1965, Act 290, Eff. July 1, 1966;—Am. 1970, Act 103, Imd. Eff. July 23, 1970;—Am. 1980, Act 274, Imd. Eff. Oct. 8, 1980;—Am. 1986, Act 277, Imd. Eff. Dec. 19, 1986;—Am. 2004, Act 103, Imd. Eff. May 20, 2004.

408.754 Promulgation of rules; scope; use of title.

Sec. 4. (1) The department shall promulgate rules for the safe construction, installation, inspection, operation, and repair of boilers in the state.

(2) The rules promulgated for new construction shall be based upon and follow the generally accepted nationwide engineering standards, formulae, and practices established and pertaining to boiler construction and safety. The department, by rule, may adopt an existing published codification, known as the boiler and pressure vessel code of the American society of mechanical engineers, with the amendments and interpretations.

(3) The department shall promulgate rules for the safe inspection and maintenance of boilers that were in use in the state before July 1, 1966. The rules promulgated shall be based upon and follow the generally accepted nationwide engineering standards and may be based upon an existing published codification known as the inspection code of the national board of boiler and pressure vessel inspectors.

(4) A departure from the requirements of this section is permitted in an unusual situation involving a boiler of special design or construction if the board is satisfied that a proposed facility will provide a degree of safety commensurate with the intent of this act.

(5) Upon payment of a fee as prescribed by section 4a and without examination, the board may register an applicant for the use of a title described in section 13a who is a boiler operator or stationary engineer licensed or registered as a boiler operator or stationary engineer in another state, municipality, or country whose requirements for licensure or registration are, at a minimum, substantially equivalent to the requirements of this state for registration as determined by the board, if that other state, municipality, or country extends the same privileges through reciprocity to a boiler operator or stationary engineer registered in this state.

History: 1965, Act 290, Eff. July 1, 1966;—Am. 1966, Act 273, Imd. Eff. July 12, 1966;—Am. 1970, Act 103, Imd. Eff. July 23, 1970;—Am. 1976, Act 363, Imd. Eff. Dec. 23, 1976;—Am. 1980, Act 274, Imd. Eff. Oct. 8, 1980;—Am. 2008, Act 159, Imd. Eff. June 11, 2008.

Administrative rules: R 408.4001 et seq. of the Michigan Administrative Code.

408.754a Rules to establish fee schedules; filing completed licensing application; issuance of license within certain time period; report; state boiler inspection fund; “completed application” defined.

Sec. 4a. (1) The department, in consultation with the board, shall promulgate rules to establish the fee schedules for licenses, permits, certificates, registrations, examinations, and inspections. The fees shall reflect the actual costs and expenses for the department of labor and economic growth in issuing licenses, permits, registrations, examinations, and certificates and in conducting inspections.

(2) Beginning July 23, 2004, the department of labor and economic growth shall issue an initial or renewal license, permit, or registration, not later than 90 days after the applicant files a completed application. Receipt of the application is considered the date the application is received by any agency or department of the state of Michigan. If the application is considered incomplete by the department of labor and economic growth, the department of labor and economic growth shall notify the applicant in writing, or make the information electronically available, within 30 days after receipt of the incomplete application, describing the deficiency and requesting the additional information. The 90-day period is tolled upon notification by the department of labor and economic growth of a deficiency until the date the requested information is received by the department of labor and economic growth. The determination of the completeness of an application does not operate as an approval of the application for the registration, license, or permit and does not confer eligibility of an applicant determined otherwise ineligible for issuance of a registration, license, or permit.

(3) If the department of labor and economic growth fails to issue or deny a registration, license, or permit within the time required by this section, the department of labor and economic growth shall return the registration, license, or permit fee and shall reduce the registration, license, or permit fee for the applicant's next renewal application, if any, by 15%. The failure to issue a registration, license, or permit within the time required under this subsection does not allow the department to otherwise delay the processing of the application, and that application, upon completion, shall be placed in sequence with other completed applications received at that same time. The department of labor and economic growth shall not discriminate against an applicant in the processing of the application based upon the fact that the registration, license, or permit fee was refunded or discounted under this subsection.

(4) Beginning October 1, 2005, the director shall submit a report by December 1 of each year to the standing committees and appropriations subcommittees of the senate and house of representatives concerned with occupational issues. The director shall include all of the following information in the report concerning the preceding fiscal year:

(a) The number of initial and renewal applications the department of labor and economic growth received and completed within the 90-day time period described in subsection (2).

(b) The number of applications denied.

(c) The number of applicants not issued a permit, registration, or license within the 90-day time period and

the amount of money returned to licensees, permittees, and registrants under subsection (3).

(5) To accomplish the objectives of this section and this act, a state boiler inspection fund is created as a restricted fund in the state treasury. The state treasurer is the custodian of the fund and may invest the surplus of the fund. Earnings from those investments shall be credited to the fund. The state treasurer shall notify the director and the legislature of interest credited and the balance of the fund as of September 30 of each year. The director shall supervise and administer the fund. Fees received by the department of labor and economic growth and money collected under this act shall be deposited in the state boiler inspection fund and shall be appropriated by the legislature for the operations of the boiler division and indirect overhead expenses in the department of labor and economic growth. Funds that are unexpended at the end of each fiscal year shall not lapse to the general fund and shall be returned to the state boiler inspection fund.

(6) As used in this section, "completed application" means an application complete on its face and submitted with any applicable registration, licensing, or permit fees as well as any other information, records, approval, security, or similar item required by law or rule from a local unit of government, a federal agency, or a private entity but not from another department or agency of the state of Michigan.

History: Add. 1980, Act 274, Imd. Eff. Oct. 8, 1980;—Am. 1986, Act 277, Imd. Eff. Dec. 19, 1986;—Am. 2004, Act 265, Imd. Eff. July 23, 2004;—Am. 2008, Act 159, Imd. Eff. June 11, 2008.

Administrative rules: R 408.4001 et seq. of the Michigan Administrative Code.

408.755 Nonconforming boilers; special design; special installation and operating permit.

Sec. 5. No boiler which does not conform to the rules and regulations formulated by the board governing new construction and installation shall be installed and operated in this state after July 1, 1966, unless the boiler is of special design or construction, and is not covered by the rules and regulations, nor is in any way inconsistent with such rules and regulations, in which case a special installation and operation permit may at its discretion be granted by the board.

History: 1965, Act 290, Eff. July 1, 1966;—Am. 1966, Act 273, Imd. Eff. July 12, 1966.

408.756 Maximum allowable pressure; safety standards; sale or reinstallation.

Sec. 6. (1) The maximum allowable pressure of a boiler carrying the American society of mechanical engineers' code symbol shall be determined by the applicable sections of the code under which it was constructed and stamped.

(2) The maximum allowable pressure of a boiler which does not carry the American society of mechanical engineers' code symbol may be computed in accordance with the inspection code of the national board of boiler and pressure vessel inspectors.

(3) This act shall not be construed as in any way preventing the use, sale or reinstallation of an existing boiler, if it has been made to conform to the rules and regulations of the board governing existing installations, if it has been found upon inspection to be in a safe condition.

History: 1965, Act 290, Eff. July 1, 1966.

408.757 Exemptions.

Sec. 7. This act shall not apply to any of the following:

(a) Boilers under federal control.

(b) Boilers used in the power plants of self-propelled vehicles designed primarily for the transportation of persons or property upon a highway, except vehicles used exclusively upon stationary rails or tracks.

(c) Boilers used solely for agricultural purposes.

(d) Steam or vapor boilers carrying a pressure of not more than 15 p.s.i.g., which are located in a private residence or in an apartment building with a capacity of less than 6 families.

(e) Hot water boilers operated at a pressure not exceeding 160 p.s.i.g. or a temperature not exceeding 250 degrees Fahrenheit that are located in a private residence or in an apartment building with a capacity of less than 6 families.

History: 1965, Act 290, Eff. July 1, 1966;—Am. 1970, Act 103, Imd. Eff. July 23, 1970;—Am. 1980, Act 274, Imd. Eff. Oct. 8, 1980;—Am. 2008, Act 159, Imd. Eff. June 11, 2008.

408.757a Antique steam boilers; compliance with rules; inspection; certificate of inspection; exception.

Sec. 7a. (1) Antique steam boilers shall comply with the rules promulgated by the board and shall be inspected once every 3 years. An owner of an antique steam boiler may request an inspection more often than every 3 years. Antique steam boilers used for commercial purposes shall be inspected annually. A certificate of inspection shall be issued by the department of labor and economic growth upon compliance with the

applicable rules.

(2) This act does not apply to miniature steam or marine engines used as a hobby.

History: Add. 1969, Act 157, Eff. Oct. 1, 1969;—Am. 1982, Act 176, Imd. Eff. June 9, 1982;—Am. 2004, Act 103, Imd. Eff. May 20, 2004.

408.757b Act inapplicable to certain boilers.

Sec. 7b. This act shall not apply to boilers used on farms for mint processing purposes.

History: Add. 1974, Act 194, Imd. Eff. July 2, 1974.

408.757c Miniature hobby locomotive; annual inspection; report; fee; rules; application and inspection by club; “public display or use” defined.

Sec. 7c. (1) Subject to subsections (2), (3), (4), and (5), this act does not apply to a miniature hobby locomotive operating on narrow gauge tracks less than 24 inches in width.

(2) The department of consumer and industry services shall inspect annually a miniature hobby locomotive operating in a public display or use. The inspection shall be conducted by a deputy inspector or special inspector or by a miniature hobby locomotive club in the manner provided for in subsections (4) and (5). The inspector shall file a copy of the inspection report with the chief inspector and provide a copy of the inspection report to the owner of the miniature hobby locomotive.

(3) The fee for an inspection conducted by a deputy or special inspector is \$15.00. The department of consumer and industry services, upon demonstration that the miniature hobby locomotive boiler complies with the applicable rules governing miniature hobby locomotives, shall issue a certificate of inspection to the owner of that locomotive.

(4) The director shall promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, regarding the inspection, certification, and adoption by reference or establishment of inspection and certification standards for boilers used on miniature hobby locomotives subject to this section. The rules shall include a procedure for approval and authorization of miniature hobby locomotive clubs to perform inspections and certify boilers used in miniature hobby locomotives.

(5) The board shall approve a miniature hobby locomotive club applying to the board for approval to inspect and certify boilers used in miniature hobby locomotives upon the board's determination that the club complies with and applies the inspection and certification standards established in the rules. After approval and authorization by the board, the miniature hobby locomotive club may inspect boilers and certify to the board that a miniature hobby locomotive complies with the standards contained in the rules.

(6) As used in this section, “public display or use” means display to or use by the general public but not the owner or the owner's family.

History: Add. 1998, Act 503, Imd. Eff. Jan. 5, 1999.

408.758 Chief inspector; appointment, qualifications, and duties.

Sec. 8. (1) The director shall appoint, subject to civil service rules, a resident of this state, who has not less than 10 years' experience in the inspection, construction, maintenance, repair, or operation of high pressure boilers as a mechanical engineer, steam operating engineer, boilermaker, or boiler inspector, and who has passed the examination prescribed by section 12, to be chief inspector. Instead of the examination provided for in section 12, the appointee shall hold a license or a certificate of competency as an inspector of boilers for a state that has a standard of examination substantially equal to the standard of this state, or a license as an inspector of boilers issued by the national board of boiler and pressure vessel inspectors.

(2) The chief inspector, if authorized by the director, shall:

- (a) Cause the prosecution of all violators of this act.
- (b) Issue, suspend, or revoke for cause, inspection certificates, as provided in section 20.
- (c) Enforce the laws of the state governing the use of boilers to which this act applies.
- (d) Keep a complete record of the type, dimensions, maximum allowable pressure, age, location, and date of the last recorded inspection of all boilers to which this act applies.
- (e) Publish and distribute, among manufacturers and others requesting it, a copy of the rules adopted by the board.

History: 1965, Act 290, Eff. July 1, 1966;—Am. 1980, Act 274, Imd. Eff. Oct. 8, 1980.

408.759 Deputy inspectors; employment; qualifications.

Sec. 9. The director, subject to civil service rules, shall employ deputy inspectors who shall be responsible to the chief inspector. A deputy inspector shall have had at the time of appointment not less than 5 years' experience in the inspection, construction, maintenance, repair, or operation of high pressure boilers as a

mechanical engineer, steam operating engineer, boilermaker, or boiler inspector. A deputy inspector shall have passed the examination provided for in section 12. Instead of the examination provided in section 12, a deputy inspector shall hold a license or a certificate of competency as an inspector of boilers for a state that has a standard of examination substantially equal to the standard of this state, or a license as an inspector of boilers issued by the national board of boiler and pressure vessel inspectors.

History: 1965, Act 290, Eff. July 1, 1966;—Am. 1980, Act 274, Imd. Eff. Oct. 8, 1980.

408.760 Inspectors' bonds; amounts, payment.

Sec. 10. The chief inspector shall furnish a bond in the sum of \$5,000.00 and each of the deputy inspectors, employed and paid by the state, shall furnish a bond in the sum of \$2,000.00, conditioned upon the faithful performance of their duties and upon a true account of moneys handled by them respectively and the payment thereof to the proper recipient. The cost of the bonds shall be paid by the state.

History: 1965, Act 290, Eff. July 1, 1966.

408.761 Special inspectors; qualifications; application for license or examination; filing; fees; license renewal; salary or expenses from state prohibited; continuance of license; inspection of boilers; exemption from inspection fees.

Sec. 11. (1) The director, upon the request of a company authorized to insure against loss from explosion of boilers in this state; a city having an authorized boiler inspection department; or a company operating boilers in this state for which the owner or user maintains a regularly established inspection service which is under the supervision of 1 or more registered professional engineers regularly employed by the owner or user, shall issue to an inspector of the company a license as a special inspector if the inspector before receiving his or her license satisfactorily passes the examination provided for in section 12. Instead of the examination, provided for in section 12, an inspector shall hold a license or a certificate of competency as an inspector of boilers for a state that has a standard of examination substantially equal to the standard of this state, or a license as an inspector of boilers and pressure vessels issued by the national board of boiler and pressure vessel inspectors. A license as a special inspector for an inspector of a company operating boilers in this state shall be issued only if the inspector meets the requirements of this section and is employed full-time by the company and his or her duties include making inspections of boilers used, or to be used, by the company, and not for resale.

(2) An application for a license as an inspector of boilers shall be filed with the department of labor accompanied by a fee prescribed pursuant to section 4a. An application for examination as a special inspector shall be filed with the department of labor and be accompanied by a fee prescribed pursuant to section 4a not less than 30 days before the examination date. This fee shall entitle the applicant to take the examination provided in section 12, twice if necessary, and if successful in passing either examination, to a license. An additional fee prescribed pursuant to section 4a shall accompany each subsequent application. Each license issued to special inspectors shall be renewed annually upon an application accompanied by a fee prescribed pursuant to section 4a.

(3) The special inspectors shall not receive a salary or any expenses from this state. The continuance of a special inspector's license is conditioned upon the inspector continuing in the employ of a boiler insurance company, a city, or a company operating a boiler in this state and upon the inspector maintaining the standards imposed by this act.

(4) The special inspectors shall inspect all boilers insured, operated, or under the jurisdiction of the employer and, when inspected, the owners and users of the boilers shall be exempt from the payment to the department of the inspection fee prescribed pursuant to section 4a.

History: 1965, Act 290, Eff. July 1, 1966;—Am. 1970, Act 103, Imd. Eff. July 23, 1970;—Am. 1980, Act 274, Imd. Eff. Oct. 8, 1980;—Am. 1986, Act 277, Imd. Eff. Dec. 19, 1986.

408.762 Examination for inspectors; content; reexamination; record for inspection.

Sec. 12. The examination for chief, deputy, or special inspectors shall be written. The examination for boiler operators shall be either written or oral. The examination for stationary engineers shall be both written and oral. The examinations shall be administered by the board, and not less than 2 members of the board shall be present at all times during an examination. Examinations shall be confined to questions that will aid in determining the fitness and competency of the applicant for the intended service, and may be those prepared by the national board of boiler and pressure vessel inspectors. The board may adopt any examination it determines appropriate and may delegate any administrative functions relating to the conduct of the examination. If an applicant for a license fails to pass the examination, the applicant may appeal to the board for another examination which shall be given by the board within 90 days. The record of an applicant's

examination shall be accessible to the applicant and the applicant's employer.

History: 1965, Act 290, Eff. July 1, 1966;—Am. 2008, Act 159, Imd. Eff. June 11, 2008.

408.763 Installation or repair of boiler; license required; person licensed under Forbes mechanical contractors act; examination; issuance; fee; renewal; exemption.

Sec. 13. (1) Except as otherwise provided in this act, a person shall not engage in the business of installing boilers or repairing boilers, or both, unless the person has obtained a license under this act from the director.

(2) A person licensed under the Forbes mechanical contractors act, 1984 PA 192, MCL 338.971 to 338.988, in the classification of hydronic heating and cooling and process piping may install, repair, alter, and remove a residential boiler installed in a residence exempt from this act under section 7 without obtaining a license under this act.

(3) The board may conduct an examination for a license to establish the competency of an applicant.

(4) A license shall be issued by the director upon recommendation of the board and upon payment of a fee prescribed pursuant to section 4a for each application.

(5) A license shall be renewed annually upon payment of a fee prescribed pursuant to section 4a.

(6) An individual in the employ of a licensee is not required to be licensed.

History: 1965, Act 290, Eff. July 1, 1966;—Am. 1966, Act 273, Imd. Eff. July 12, 1966;—Am. 1980, Act 274, Imd. Eff. Oct. 8, 1980;—Am. 1986, Act 277, Imd. Eff. Dec. 19, 1986;—Am. 2008, Act 518, Imd. Eff. Jan. 13, 2009.

408.763a Operation of boiler and auxiliaries without registration; use of certain terms by individual or business entity; registration requirements.

Sec. 13a. (1) An individual may operate a boiler and associated auxiliaries without obtaining a registration under this act.

(2) An individual or business entity shall not use the terms "registered boiler operator", "certified boiler operator", "registered stationary engineer", "certified stationary engineer", "low pressure registered boiler operator", "low pressure certified boiler operator", "high pressure registered boiler operator", "high pressure certified boiler operator", "third-class registered stationary engineer", "third-class certified stationary engineer", "second-class registered stationary engineer", "second-class certified stationary engineer", "first-class registered stationary engineer", "first-class certified stationary engineer", or any other name, style, or description that indicates that the individual or an individual employed by the business entity is registered under this act unless the individual has been issued a registration under this act.

(3) The individual participating in an approved apprenticeship program, a qualified technical training program, or a qualified training program may use the title "apprentice certified boiler operator" or "apprentice certified stationary engineer".

(4) An individual registered under this act shall only use 1 of the titles described in subsection (2) or the abbreviation "R.B.O.", "C.B.O.", "R.S.E.", or "C.S.E.".

(5) A person applying for a registration under this act shall be not less than 18 years of age, shall possess the physical and mental capacities to perform his or her duties in a competent and safe manner, and shall meet the applicable requirements of section 13d. An applicant shall use a form provided by the director.

(6) The director shall issue a registration upon recommendation of the board and upon the applicant's payment of an examination and registration fee as provided for in rules of the department as prescribed in section 4a for each application. A registration shall be renewed annually upon payment of a fee prescribed pursuant to section 4a.

(7) Not later than 1 year after the effective date of the amendatory act that added this section, the board shall recommend for registration without examination an applicant who submits evidence satisfactory to the board of 1 or more of the following:

(a) The applicant has had not less than 5 years of experience in the class or category of boiler operator or stationary engineer for which the applicant is applying.

(b) The applicant possesses a license as a boiler operator or stationary engineer from the cities of Detroit or Dearborn in a class for which the applicant is applying.

(c) The applicant has successfully completed a 4-year approved apprenticeship program, a qualified technical education program, or a qualified training program in the class or category for which the applicant is applying.

History: Add. 2008, Act 159, Imd. Eff. June 11, 2008.

408.763b Boiler operator and stationary engineer registrations; classification.

Sec. 13b. Boiler operator and stationary engineer registrations are classified as follows:

(a) Low pressure boiler operator, who operates low pressure boiler plants having an aggregate of not more

than 4,000 square feet of boiler heating surface.

(b) High pressure boiler operator, who operates boiler plants having an aggregate of not more than 4,000 square feet of boiler heating surface or not more than 10 steam engine-turbine horsepower.

(c) Third-class stationary engineer, who operates boiler plants having an aggregate of not more than 7,500 square feet of boiler heating surface or not more than 100 steam engine-turbine horsepower.

(d) Second-class stationary engineer, who operates boiler plants having an aggregate of not more than 20,000 square feet of boiler heating surface or not more than 200 steam engine-turbine horsepower.

(e) First-class stationary engineer, who operates boiler plants having an aggregate of 20,000 square feet or more of boiler heating surface or 200 steam engine-turbine horsepower or more.

History: Add. 2008, Act 159, Imd. Eff. June 11, 2008.

408.763c Qualified technical education programs; course content; rules.

Sec. 13c. (1) Not later than 180 days after June 11, 2008, the department of energy, labor, and economic growth shall promulgate rules designating the course content for qualified technical education programs for the various categories and classes of registration of boiler operators and stationary engineers.

(2) The rules described in subsection (1) shall provide that the course content of qualified technical education programs for entry level registrants include at least all of the following subject matter areas:

(a) Basic functions, construction, and operation of all types of boilers.

(b) The function of boiler appliances, accessories, and associated auxiliaries.

(c) Materials used in boilers and the effect of temperature extremes on those materials.

(d) The fuels used in boilers and fundamentals of combustion.

(e) Basic electricity.

(f) Plant operation and boiler maintenance.

(g) Instrumentation and controls.

(h) Fundamental mathematics and principles of the metric system.

(i) General safety procedures.

(j) Recognition of dangerous operation conditions.

(3) The department of energy, labor, and economic growth shall provide that the course content for categories and classes other than entry level registrants includes subject matter similar to those described in subsection (2) in the degree of depth and difficulty appropriate for the category and class.

History: Add. 2008, Act 159, Imd. Eff. June 11, 2008;—Am. 2009, Act 40, Imd. Eff. June 18, 2009.

408.763d Registration requirements; qualifications.

Sec. 13d. (1) The director shall not issue a registration for a title described in section 13a(2) unless the applicant meets the requirements for the classification as prescribed in subsections (2) to (6).

(2) An applicant for a low pressure boiler operator registration shall have not less than 1 year of experience operating or maintaining low or high pressure boilers, steam prime movers, or associated auxiliaries.

(3) An applicant for a high pressure boiler operator registration shall have 1 or more of the following:

(a) Not less than 2 years of experience in the operation of a high pressure boiler.

(b) A low pressure boiler operator's registration and not less than 1 year of experience in the operation of a low pressure boiler.

(c) Not less than 1 year of either a qualified training program, a qualified technical education program, or an approved apprenticeship program.

(4) An applicant for a third-class stationary engineer registration shall meet 1 or more of the following requirements:

(a) Be registered as a high pressure boiler operator and have not less than 1 year of experience in the operation of a high pressure boiler.

(b) Be registered as a low pressure boiler operator, have not less than 1 year of experience in the operation of a low pressure boiler, and have not less than 1 year of maintenance experience on high pressure boilers and associated auxiliaries.

(c) Be registered as a high pressure boiler operator and have not less than 1 year of boiler maintenance experience or not less than 1 year as an apprentice in an approved training program in a high pressure boiler plant having an aggregate heating surface of more than 4,000 square feet.

(d) Have not less than 3 years of experience in the operation of boilers in a high pressure boiler plant having an aggregate heating surface of more than 4,000 square feet.

(e) Have not less than 1 year of experience in the operation of boilers in a high pressure boiler plant having an aggregate heating surface of more than 4,000 square feet along with sufficient experience operating steam prime movers in excess of 10 horsepower for a combined total of not less than 3 years of experience.

(f) Have an associate degree in energy technology or a related field as determined by the board with a power engineering option from a 2-year college whose program is approved by the board and employment or cooperative education experience of not less than 360 hours as a power engineer, boiler operator, or stationary engineer in a steam electric generation plant or a high pressure steam heating or process plant.

(5) An applicant for a second-class stationary engineer registration shall meet 1 or more of the following requirements:

(a) Be registered as a third-class stationary engineer and have not less than 1 year of experience as a third-class stationary engineer.

(b) Have a bachelor's degree in engineering, engineering technology, heating/power technology, or energy technology from a college or university whose program is approved by the board and employment experience as an engineer in the engineering or research division of a steam electric power generating plant for not less than 1 year.

(c) Have not less than 4 years of experience in the operation of boilers in a high pressure boiler plant having an aggregate heating surface of more than 7,500 square feet.

(d) Have not less than 1 year of experience in the operation of boilers in a high pressure boiler plant having an aggregate heating surface of more than 7,500 square feet along with sufficient experience operating steam prime movers in excess of 100 horsepower for a combined total of not less than 4 years of experience.

(e) Have not less than 1 year of experience in the operation of boilers in a high pressure boiler plant having an aggregate heating surface of more than 7,500 square feet along with sufficient experience operating boilers in a high pressure boiler plant having an aggregate heating surface of more than 4,000 square feet for a combined total of not less than 4 years of experience.

(6) An applicant for a first-class stationary engineer registration shall meet 1 or more of the following requirements:

(a) Be registered as a second-class stationary engineer and have not less than 2 years of experience as a second-class stationary engineer.

(b) Have not less than 6 years of experience in the operation of boilers in a high pressure boiler plant having an aggregate heating surface of more than 20,000 square feet.

(c) Have not less than 2 years of experience in the operation of boilers in a high pressure boiler plant having an aggregate heating surface of more than 20,000 square feet along with sufficient experience operating steam prime movers in excess of 200 horsepower for a combined total of not less than 6 years of experience.

(d) Have not less than 2 years of experience in the operation of boilers in a high pressure boiler plant having an aggregate heating surface of more than 20,000 square feet along with sufficient experience in the operation of boilers in a high pressure boiler plant having an aggregate heating surface of more than 7,500 square feet of heating surface for a combined total of not less than 6 years of experience.

(e) Complete a 4-year approved apprenticeship program or a 4-year qualified training program.

(f) Complete a 4-year program with a bachelor's degree from a college or university in engineering, engineering technology, heating/power technology, or energy technology whose program is approved by the board and which includes a hands-on power option from a 2-year community college program or the equivalent, as determined by the board, and not less than 1 year of employment, internship, or cooperative education experience in a steam electric generation plant or high pressure steam heating process plant.

History: Add. 2008, Act 159, Imd. Eff. June 11, 2008.

408.764 License or registration suspensions; notice; appeal; revocation; hearing; reinstatement.

Sec. 14. (1) The chief inspector may suspend the license of an inspector, repairer, or installer or the registration of a boiler operator or stationary engineer due to the incompetence of the registrant or licensee or due to willful falsification of a matter or statement contained in that registrant's or licensee's application or in a report of inspection made by the registrant or licensee. Written notice of the suspension shall be given by the chief inspector within 10 days after the suspension to the registrant or licensee, the registrant's or licensee's employer, and the board. A person whose registration or license has been suspended may appeal to the board as provided in section 22 and be present in person and be represented by counsel at the hearing of the appeal.

(2) If the board has reason to believe that a registrant or licensee is no longer qualified to hold his or her registration or license, the board, upon not less than 10 days' written notice to the registrant or licensee and the registrant's or licensee's employer, shall hold an administrative hearing at which the registrant or licensee and his or her employer shall have an opportunity to be heard. If, as a result of the hearing, the board finds that the registrant or licensee is no longer qualified to hold his or her registration or license, the board shall

recommend to the director that the registration or license be revoked, and the director shall immediately revoke the registration or license.

(3) A person whose registration or license has been suspended may apply, after 90 days from the date of the suspension, for reinstatement of the registration or license.

History: 1965, Act 290, Eff. July 1, 1966;—Am. 2008, Act 159, Imd. Eff. June 11, 2008.

408.765 License lost or destroyed; reissuance, fee.

Sec. 15. If a license is lost or destroyed, a new license shall, upon application and payment of a fee of \$5.00, be issued in its place without another examination.

History: 1965, Act 290, Eff. July 1, 1966.

408.766 Repealed. 1966, Act 273, Imd. Eff. July 12, 1966.

Compiler's note: The repealed section required permits for installation or alteration of boilers and prescribed fees.

408.767 Installation or alteration of boiler; permit required; issuance; fee.

Sec. 17. A person shall not install or alter a boiler without first securing a permit to install or alter a boiler from the boiler division of the department of labor. A permit shall be issued only to a person licensed as provided in this act. Work shall not be performed except by or under the immediate supervision of a person licensed under this act. A permit fee prescribed pursuant to section 4a shall be paid directly to the department of labor and shall accompany an application for a permit to install or alter a boiler. A permit fee is not required for a boiler exempt from inspection as provided by section 7.

History: 1965, Act 290, Eff. July 1, 1966;—Am. 1966, Act 273, Imd. Eff. July 12, 1966;—Am. 1970, Act 103, Imd. Eff. July 23, 1970;—Am. 1980, Act 274, Imd. Eff. Oct. 8, 1980;—Am. 1986, Act 277, Imd. Eff. Dec. 19, 1986.

408.768 Repair of boiler; permit required; exceptions; issuance; fee.

Sec. 18. A person shall not repair a boiler without first securing a permit to repair the boiler from the boiler division of the department of labor, unless the repair has been authorized by a licensed inspector pending issuance of the permit, or the repair is emergency maintenance performed by qualified welders regularly employed by a firm that utilizes properly qualified welding procedures to weld on boilers owned and operated by the firm. A permit shall be issued only to a person licensed to repair boilers under this act. Work shall not be performed except by or under the immediate supervision of a licensed person. A permit fee prescribed pursuant to section 4a shall be paid directly to the department of labor and shall accompany an application for a permit to repair. A fee for a permit to repair is not required from a firm that utilizes properly qualified welding procedures and regularly employs qualified welders, registered with the boiler division of the department of labor, to weld on boilers owned and operated by the firm.

History: 1965, Act 290, Eff. July 1, 1966;—Am. 1980, Act 274, Imd. Eff. Oct. 8, 1980;—Am. 1986, Act 277, Imd. Eff. Dec. 19, 1986.

408.769 Access to premises; inspection of boiler; hydrostatic test.

Sec. 19. (1) The director, the chief inspector, or a deputy inspector shall have free access, during reasonable hours, to premises in the state where a boiler is being constructed, installed, repaired, or operated, for the purpose of determining whether the boiler is in accordance with this act.

(2) Each boiler used or proposed to be used in this state shall be thoroughly inspected as to the boiler's construction, installation, and condition as follows:

(a) Power boilers, process boilers, and high pressure high temperature water boilers shall receive a certificate inspection annually and shall be externally inspected annually, while under pressure, within 6 months from the date of the certificate inspection.

(b) Low pressure steam or vapor heating boilers, hot water heating boilers, and hot water supply boilers shall receive a certificate inspection biennially.

(c) A grace period of 2 months beyond the periods in subdivisions (a) and (b) may elapse between certificate inspections and the board may permit longer periods between certificate inspections.

(3) The inspection shall be made by the chief inspector, a deputy inspector, or by a special inspector.

(4) If a hydrostatic test is considered necessary by the inspector, the test shall be made by the boiler owner or user.

(5) A boiler, other than a cast iron sectional boiler, that is to be installed in this state shall be inspected during construction, as required by the applicable rules of the board, by an inspector licensed to inspect boilers in this state. If the boiler was constructed outside of the state, the boiler shall have been inspected by an inspector holding a license as an inspector of boilers for a state that has a standard of examination substantially equal to that of this state or a license issued by the national board of boiler and pressure vessel

inspectors.

History: 1965, Act 290, Eff. July 1, 1966;—Am. 1966, Act 273, Imd. Eff. July 12, 1966;—Am. 1970, Act 103, Imd. Eff. July 23, 1970;—Am. 1980, Act 274, Imd. Eff. Oct. 8, 1980.

408.770 Inspection report; filing; forms; fee; issuance, contents, validity, posting, and suspension of inspection certificate.

Sec. 20. (1) The chief inspector, a deputy inspector, and a company or city that employs special inspectors, within 30 days following each boiler certificate inspection required by this act, shall file a report of the inspection with the chief inspector upon appropriate forms approved by the board. The forms may be the forms recommended by the national board of boiler and pressure vessel inspectors. A report of an external inspection is not required except when an external inspection discloses that a boiler is in a dangerous condition.

(2) If the report filed pursuant to subsection (1) shows that a boiler complies with the rules of the board, the owner or user of the boiler shall pay a fee prescribed pursuant to section 4a directly to the department of labor. The department of labor shall issue to that owner or user of a boiler an inspection certificate bearing the date of inspection and specifying the maximum pressure under which the boiler may be operated. The inspection certificate shall be valid for not more than 12 months in the case of power boilers, except that the certificate shall be valid during a grace period as provided in section 19. An inspection certificate shall be valid for not more than 24 months for low pressure steam or vapor heating boilers, hot water heating boilers, or hot water supply boilers, except that the certificate shall be valid during a grace period as provided in section 19. A certificate shall be posted under glass in the room containing the boiler inspected. If the boiler is not located within the building, the certificate shall be posted in a location convenient to the boiler inspected or in a place that is accessible to interested parties.

(3) An inspection certificate issued for an insured boiler by a special inspector shall not be valid after the boiler for which the certificate was issued ceases to be insured by a company authorized by this state to carry the insurance, if the insurance was terminated because of an unsafe condition or a violation of a rule of the board.

(4) The chief inspector may suspend an inspection certificate when, in his or her opinion, the boiler for which the certificate was issued cannot be operated without harm to the public safety, or when the boiler is found not to comply with the rules promulgated under this act. A suspension of an inspection certificate shall continue in effect until the boiler conforms to the rules of the board and the inspection certificate has been reinstated.

History: 1965, Act 290, Eff. July 1, 1966;—Am. 1970, Act 103, Imd. Eff. July 23, 1970;—Am. 1980, Act 274, Imd. Eff. Oct. 8, 1980;—Am. 1986, Act 277, Imd. Eff. Dec. 19, 1986.

Administrative rules: R 408.4001 et seq. of the Michigan Administrative Code.

408.771 Repealed. 1986, Act 277, Imd. Eff. Dec. 19, 1986.

Compiler's note: The repealed section pertained to fees.

408.772 Appeal to board.

Sec. 22. A person who is aggrieved by an order or act of the director or the chief inspector within 15 days' notice after the order or act, may appeal the order or act to the board. The board, within 30 days, shall issue an appropriate order either approving or disapproving the order or act. A copy of the order of the board shall be given to all interested parties.

History: 1965, Act 290, Eff. July 1, 1966;—Am. 1980, Act 274, Imd. Eff. Oct. 8, 1980.

408.773 Inapplicability of act; construction of act as to repairs in public utilities and industrial plants.

Sec. 23. The provisions of this act shall not be applicable to or in any city having a population of 1,000,000 or more.

Nothing in this act shall be construed to require a license or permit to repair boilers located in public utilities or industrial plants which repair and maintain their own boilers in accordance with accepted procedures and practices; or to require a license to replace a boiler with a similar unit in such public utilities or industrial plants.

History: 1965, Act 290, Eff. July 1, 1966;—Am. 1966, Act 273, Imd. Eff. July 12, 1966.

408.774 Unlawful operation of boilers; violation; penalty.

Sec. 24. (1) An individual, or other person, shall not operate a boiler without a valid inspection certificate.

The operation of a boiler without a valid inspection certificate or at a pressure exceeding that specified in the inspection certificate is a misdemeanor on the part of the owner, user, or operator punishable by imprisonment for not more than 60 days, or by a fine of not more than \$500.00, or both. Each day of the unlawful operation is a separate offense.

(2) A person using a title described in section 13a(2) without a registration issued under this act is guilty of a misdemeanor punishable by imprisonment for not more than 60 days, a fine of not more than \$2,000.00, or both.

(3) A business entity using or advertising the use of an individual having a title described in section 13a(2), if that individual is not registered under this act, is guilty of a misdemeanor punishable by imprisonment for not more than 60 days, a fine of not more than \$2,000.00, or both.

History: 1965, Act 290, Eff. July 1, 1966;—Am. 1966, Act 273, Imd. Eff. July 12, 1966;—Am. 2008, Act 159, Imd. Eff. June 11, 2008.

408.775 Unlawful installation or repair; penalty; exception.

Sec. 25. It shall be unlawful for any person, firm, partnership or corporation to install or repair in this state, a boiler without a valid license to install or repair. The installation or repair of boilers without a valid license is a misdemeanor on the part of the installer or repairer. The provisions of this section shall not apply to the repair or replacement of boilers exempted from the license and permit provisions of this act by section 23.

History: 1965, Act 290, Eff. July 1, 1966;—Am. 1970, Act 103, Imd. Eff. July 23, 1970.

408.776 Effective date of act.

Sec. 26. This act shall take effect July 1, 1966.

History: 1965, Act 290, Eff. July 1, 1966.

ELEVATOR SAFETY BOARD

Act 227 of 1967

AN ACT to regulate the inspection, construction, installation, alteration, maintenance, repair and operation of elevators and the licensing of elevator contractors; to prescribe the functions of the director of labor; to create, and prescribe the functions of, the elevator safety board; to provide penalties for violations of the act; and to repeal certain acts and parts of acts.

History: 1967, Act 227, Eff. Nov. 2, 1967.

The People of the State of Michigan enact:

408.801 Elevators; applicability of definitions in American standard safety code.

Sec. 1. The definitions in section 3 of the standard are applicable to this act, except where they conflict with definitions in this act.

History: 1967, Act 227, Eff. Nov. 2, 1967.

Compiler's note: For transfer of powers and duties relating to promulgation of rules by the elevator safety board from the department of labor to the director of the department of consumer and industry services, see E.R.O. No. 1996-2, compiled at MCL 445.2001 of the Michigan Compiled Laws.

408.802 Definitions.

Sec. 2. (1) "Approved" means that which the director designates as acceptable to the department.

(2) "Board" means the elevator safety board.

(3) "Department" means the department of labor.

(4) "Director" means the director of labor or his duly designated representative.

(5) "Division" means the elevator safety division of the department.

(6) "Dormant elevator" means an elevator that is still intact and on the premises but the premises are vacated or the equipment is entirely disconnected in an approved manner.

(7) "Repairs" where used herein shall mean only such work as is necessary to maintain present equipment in a safe and serviceable condition and to adjust or replace defective, broken or worn parts, with parts made of equivalent material, strength and design, and where the replacing part performs the same function as the replaced part.

(8) "Major alteration" means an alteration as defined in the standard. Any person, firm or corporation performing such major alteration shall obtain a permit from the department as outlined in section 15 of this act.

History: 1967, Act 227, Eff. Nov. 2, 1967;—Am. 1980, Act 282, Imd. Eff. Oct. 9, 1980.

408.803 Elevators; definitions.

Sec. 3. (1) "Elevator" means the machinery, construction, apparatus and equipment of an incline lift, escalator, moving walk or device serving 2 or more landings used in raising and lowering a car, cage or platform which is guided. It includes a passenger elevator, freight elevator, gravity elevator, workmen's elevator, dumbwaiter, manlift and other lifting or lowering apparatus which is guided. It does not include:

(a) An elevating device within the scope of the mining act, Act No. 163 of the Public Acts of 1911, as amended, being sections 425.101 to 425.113 of the Compiled Laws of 1948.

(b) A feeding machine or belted bucket, scoop, roller or any similar type of freight conveyor.

(c) A lubrication hoist or other similar mechanism.

(d) A piling or stacking machine used within 1 story, and not penetrating a floor.

(e) A device in a private residence other than one carrying persons.

(f) An outside material hoist used for raising or lowering construction materials while a building or structure is under construction within the scope of the construction safety act, Act No. 89 of the Public Acts of 1963, as amended, being sections 408.711 to 408.724 of the Compiled Laws of 1948.

(2) "Elevator contractor" means a person, firm or corporation engaged in the business of constructing, installing, maintaining, repairing or altering elevators, including the installing or maintaining of electric wiring, fixtures, apparatus and appliances in connection with the operation or control thereof.

(3) "Elevator contractor license" means a license issued by the director to an elevator contractor covering the construction, installation, alteration, maintenance or repair by him of elevators.

History: 1967, Act 227, Eff. Nov. 2, 1967.

408.804 Elevators; definitions.

Sec. 4. (1) "General inspector" means a person holding a general certificate of competency and employed by this state as an elevator inspector or in an elevator inspection supervisory capacity.

(2) "Incline lift" means an elevator designed and operated for the conveyance of persons or material from 1 level to another. It does not include the enclosure or building, or an incline lift under the jurisdiction of the ski area safety board.

(3) "Inspector" means a general or special inspector.

(4) "Special inspector" means a person who holds a special certificate of competency and is commissioned as provided in this act.

(5) "Standard" means the American standard safety code for elevators, dumbwaiters, escalators and moving walks, A 17.1-1965.

History: 1967, Act 227, Eff. Nov. 2, 1967.

408.805 Inapplicability of act to certain municipalities.

Sec. 5. This act does not apply to or in any city, village or township having elevator inspection regulations under ordinances comparable to this act.

History: 1967, Act 227, Eff. Nov. 2, 1967.

408.806 Elevators; compliance with American code, conflicts.

Sec. 6. An elevator shall be constructed, equipped, maintained, repaired, and used with respect to the supporting members, car or platform, hoistways, guides, cables, doors and gates, safety stops and mechanisms, electrical apparatus and wiring, mechanical apparatus, counterweights, and all other appurtenances in accordance with the American standard safety code for elevators, dumbwaiters, escalators and moving walks, A 17.1-1965, and subsequent editions and amendments if adopted by the board, and rules made by the board. In case of conflict between the rules and the standard, the rules shall apply.

History: 1967, Act 227, Eff. Nov. 2, 1967.

408.807 Elevator safety board; creation; appointment, qualifications, and terms of members; vacancy; compensation and expenses.

Sec. 7. (1) The elevator safety board consisting of 11 members is created, 1 of whose members is the director. The governor shall appoint, with the advice and consent of the senate, the other 10 members for terms of 4 years. The governor shall fill a vacancy on the board for the remainder of the unexpired term with a representative of the same interest as that of the predecessor. Of the appointed members, 1 shall be a representative of owners and lessees of elevators within this state, 2 shall be representatives of insurance companies authorized to insure elevators in this state, 2 shall be representatives of the elevator constructors' union, 1 shall be a representative of a municipality in the state having a population of at least 500,000, 1 shall be a representative of architects and consulting engineers, 2 shall be representatives of manufacturers of elevators used in this state, and 1 shall be a representative of the general public.

(2) The per diem compensation of the members of the board, other than the director, and the schedule for reimbursement of expenses shall be established annually by the legislature.

History: 1967, Act 227, Eff. Nov. 2, 1967;—Am. 1976, Act 362, Imd. Eff. Dec. 23, 1976.

Transfer of powers: See MCL 16.487.

408.808 Elevator safety board; powers and duties generally; rules establishing fee schedules; conducting business at public meeting; notice of meeting.

Sec. 8. (1) The board shall have the following powers and duties:

(a) To promulgate rules for the inspection, design, construction, installation, alteration, maintenance, and use of elevators in this state pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws.

(b) To prepare examinations, interview applicants to determine their qualifications, examine qualified applicants for elevator contractor licenses or certificates of competency, and certify to the director the names of persons who successfully pass the examination given by the board.

(c) When submitted by the director, to grant exceptions or variations from the literal requirements of this act or rules promulgated by the board when it is clearly evident that exceptions or variations are necessary to prevent undue hardship or when existing conditions prevent compliance with the literal requirements, if the board believes reasonable safety will be secured by granting the exception or variation.

(d) To hear and decide appeals referred to the board by the director when requested to do so by a person, firm, or corporation aggrieved by an order or act of the department, or its authorized representatives, and to adopt rules of procedure for appeals.

(e) To conduct hearings to determine whether an elevator contractor license or certificate of competency or commission should be suspended or revoked and to make recommendation to the director.

(2) The board, with the advice of the director, shall promulgate rules pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws, to establish the fee schedules for licenses, permits, certificates, and inspections. The fees shall reflect the actual costs and expenses for the department of labor in issuing licenses, permits, certificates, and conducting inspections. The fees currently established by the board shall be in effect until the board promulgates rules to establish the fee schedules.

(3) The business which the elevator safety board may perform shall be conducted at a public meeting of the board held in compliance with Act No. 267 of the Public Acts of 1976, as amended, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976, as amended.

History: 1967, Act 227, Eff. Nov. 2, 1967;—Am. 1976, Act 362, Imd. Eff. Dec. 23, 1976;—Am. 1977, Act 191, Imd. Eff. Nov. 17, 1977;—Am. 1980, Act 282, Imd. Eff. Oct. 9, 1980.

Administrative rules: R 408.8101 et seq. of the Michigan Administrative Code.

408.809 Enforcement of act and rules.

Sec. 9. The director shall enforce the provisions of this act and the rules promulgated by the board pursuant to this act and where, owing to special conditions, a literal enforcement of the provisions of these rules will result in unnecessary hardship or involve practical difficulties, the director, upon application in specific cases, may authorize variations or modifications of the terms of these rules which will not be contrary to the public interest and so the spirit of these rules shall be observed, public safety secured, and substantial justice done.

History: 1967, Act 227, Eff. Nov. 2, 1967;—Am. 1980, Act 282, Imd. Eff. Oct. 9, 1980.

Compiler's note: Near the beginning of this section, "owing to special" evidently should read "owing to special".

408.810 General and special inspectors; qualifications; application requirements for examination as elevator inspectors; acceptance or rejection of applications; issuance of certificates of competency; reexamination.

Sec. 10. (1) A person is not authorized to serve as a general inspector unless he has had 3 years' experience in elevator construction or the equivalent as determined by the board, and holds a general certificate of competency issued by the director. A person is not authorized to serve as a special inspector unless he has had 3 years' experience in designing, installing, maintaining or inspecting elevators and holds a special certificate of competency issued by the director.

(2) An applicant for examination as an inspector of elevators shall submit to the department a completed application on a form to be furnished by the department. The application shall record the applicant's formal education, names and addresses of his previous employers, dates of employment and type of work performed. He shall also submit a letter from 1 or more of his previous employers certifying as to his character and experience. The required examination fee shall accompany the application.

(3) An application shall be rejected which contains any wilful falsification. Qualifications of the applicant shall be determined by the board. A qualified applicant for a certificate of competency as a general or special inspector shall be examined by the board. The applicant shall be accepted or rejected on the merits of his application and examination.

(4) Upon recommendation by the board, a certificate of competency for the inspection of elevators shall be issued to a successful applicant by the director. A rejected applicant is entitled after the expiration of 90 days, and upon payment of the required examination fee, to another examination. If an applicant fails to pass the prescribed examination a second time, he will not be permitted to be reexamined for 1 year after the second examination.

History: 1967, Act 227, Eff. Nov. 2, 1967.

408.811 Special inspectors; designation by insurers or local units; commissions; renewal fees; compensation.

Sec. 11. From the holders of special certificates of competency in the inspection of elevators, a company authorized to insure elevators in this state, may designate persons who are commissioned by the state to inspect elevators in the state covered by such company's policies. A local government having an approved elevator inspection department may designate persons to inspect elevators in such governments' jurisdiction. When requested, such persons shall have issued to them by the director, upon payment of the required fee, commissions to serve as special inspectors of elevators in the state. Commissions shall be renewed annually upon payment of the required fee. Special inspectors shall not be compensated by this state.

History: 1967, Act 227, Eff. Nov. 2, 1967.

408.812 Elevator contractors' licenses; applications, qualifications, expiration; exemptions.

Sec. 12. A person, firm or corporation who is to install, construct, repair, alter and maintain an elevator shall secure from the director an elevator contractor license. The license shall be issued by the director, after his receipt of an acceptable application in writing and of the fee, to a person, firm or corporation found qualified to perform such work, and who is certified by the board as having successfully passed the examination given by the board. The application is not acceptable to the board until the applicant has shown by sworn affidavit that he or the person qualified for the applicant has had at least 5 years' experience as an elevator constructor or journeyman, or equivalent. A license shall expire on December 31 of the year in which it is issued.

The contractor licensing requirements under this section for maintenance and repair work, as defined in this act, shall not apply to any firm, person, or corporation maintaining elevators in their leased or owned premises: Provided, That such elevators are not used by the general public, and that the work is performed by their permanent employees in accordance with approved procedures and practices.

History: 1967, Act 227, Eff. Nov. 2, 1967.

408.813 Certificates of competency, commissions and licenses; reissuance when lost or destroyed.

Sec. 13. A certificate of competency, commission or elevator contractor license shall be reissued upon receipt of an application by the director and payment of the renewal fee without another examination, when it is proven to the director's satisfaction that the document is lost or destroyed.

History: 1967, Act 227, Eff. Nov. 2, 1967.

408.814 Certificates of competency, commissions and licenses; suspension or revocation; grounds, hearing, notice.

Sec. 14. A certificate of competency, commission or elevator contractor license may be suspended or revoked by the director upon recommendation of the board for incompetence, neglect, misrepresentation or failure to comply with the requirements of this act, or with the rules made by the board. Such a document shall not be suspended or revoked until a hearing has been conducted after at least 15 days' written notice has been mailed to the holder of the document by ordinary mail. The hearing shall be held before the board not more than 30 days after the date of the notice, unless the hearing date is extended for cause shown.

History: 1967, Act 227, Eff. Nov. 2, 1967.

408.815 Permits for installation or alterations; plans and specifications; approval; forms; fees; emergency alterations; issuance by municipality; receipt of completed application; time period for issuance; report; "completed application" defined.

Sec. 15. (1) A person, firm, or corporation shall not install or alter an elevator without first having obtained a permit from the department. A permit shall be issued only to a person, firm, or corporation licensed by the director as an elevator contractor. Elevator hoistway enclosures shall meet the requirements of the standard. A permit to install a stair climber type of incline lift in other than a private residence shall not be issued unless special permission is granted by the director. Detailed plans and specifications of all elevator equipment and the elevator hoistway enclosure, in triplicate, shall be submitted by the licensee to the department and shall be approved by the department before the permit is issued. Permit applications shall be made on forms furnished by the department. The applicable fee shall be paid before issuance of the permit. For emergency alterations, the permit shall be obtained within 72 hours from the time of alteration.

(2) In a municipality maintaining its own approved elevator inspection department, installation or alteration plans and specifications shall be submitted to that department for its approval and, if approved, a permit for the installation or alteration of that elevator shall be issued by the municipality.

(3) Beginning the effective date of the amendatory act that added this subsection, the department shall issue an initial or renewal elevator contractor license or installation or alteration permit not later than 90 days after the applicant files a completed application. Receipt of the application is considered the date the application is received by any agency or department of the state of Michigan. If the application is considered incomplete by the department, the department shall notify the applicant in writing, or make the information electronically available, within 30 days after receipt of the incomplete application, describing the deficiency and requesting the additional information. The 90-day period is tolled upon notification by the department of a deficiency until the date the requested information is received by the department. The determination of the completeness of an application does not operate as an approval of the application for the license or permit and

does not confer eligibility of an applicant determined otherwise ineligible for issuance of a license or permit.

(4) If the department fails to issue or deny a license or permit within the time required by subsection (3), the department shall return the license or permit fee and shall reduce the license or permit fee for the applicant's next renewal application, if any, by 15%. The failure to issue a license or permit within the time required under this section does not allow the department to otherwise delay the processing of the application, and that application, upon completion, shall be placed in sequence with other completed applications received at that same time. The department shall not discriminate against an applicant in the processing of the application based upon the fact that the license or permit fee was refunded or discounted under this subsection.

(5) Beginning October 1, 2005, the director of the department shall submit a report by December 1 of each year to the standing committees and appropriations subcommittees of the senate and house of representatives concerned with occupational issues. The director shall include all of the following information in the report concerning the preceding fiscal year:

(a) The number of initial and renewal applications the department received and completed within the 90-day time period described in subsection (3).

(b) The number of applications denied.

(c) The number of applicants not issued a license or permit within the 90-day time period and the amount of money returned to licensees or permittees under subsection (4).

(6) As used in this section, "completed application" means an application complete on its face and submitted with any applicable licensing or permit fees as well as any other information, records, approval, security, or similar item required by law or rule from a local unit of government, a federal agency, or a private entity but not from another department or agency of the state of Michigan.

History: 1967, Act 227, Eff. Nov. 2, 1967;—Am. 2004, Act 269, Imd. Eff. July 23, 2004.

408.816 Fees for services; determination; payment; deposits.

Sec. 16. (1) Fees for the following matters shall be determined by the board subject to section 15:

(a) Commission.

(b) Certificate of competency examination.

(c) Elevator contractor license.

(d) Contractor examination.

(e) Permit, each elevator or device.

(f) Certificate of operation.

(g) Appeal for hearing before board.

(h) Inspection by general inspector.

(i) Special.

(2) Fees shall be paid to the director. Fees received by the director shall be transmitted to the state treasurer for deposit in the general fund. These funds shall be disbursed only as appropriated by the legislature.

History: 1967, Act 227, Eff. Nov. 2, 1967;—Am. 2004, Act 269, Imd. Eff. July 23, 2004.

408.817 Inspections; entry on premises, assistance.

Sec. 17. The director and his inspectors during reasonable hours may enter any premises within this state without hindrance for the purpose of examining equipment covered by this act in accordance with the rules promulgated by the board. The holder of a certificate of operation shall provide assistance required by the director or the inspector in making the inspection.

History: 1967, Act 227, Eff. Nov. 2, 1967.

408.818 Certificates of operation; annual issuance.

Sec. 18. The director shall issue a certificate of operation annually in accordance with the rules promulgated by the board.

History: 1967, Act 227, Eff. Nov. 2, 1967.

408.819 Sealing elevator out of service; grounds.

Sec. 19. A general inspector may seal an elevator out of service in accordance with the rules promulgated by the board or when any of the following conditions exist:

(a) When in case of emergency, in the opinion of the general inspector, the elevator is in such condition as to render it unsafe for operation.

(b) Failure to secure a certificate of operation or to renew such certificate.

(c) Failure to comply with a correction order issued by an inspector.

History: 1967, Act 227, Eff. Nov. 2, 1967.

408.820 Smoking or carrying lighted tobacco in passenger elevators prohibited; posting sign; receptacles.

Sec. 20. (1) A person shall not smoke or carry lighted tobacco in any form in a passenger elevator in any building, structure, or premises in this state. A person who has control or management of any building, structure, or premises equipped with a passenger elevator shall not permit smoking or the carrying of lighted tobacco in any form in the elevator.

(2) The owner, occupant, firm, or corporation that has control or management of a building, structure, or premises equipped with 1 or more passenger elevators shall do both of the following:

(a) Post in each elevator a sign reading, "Smoking prohibited by law — violators subject to fine of \$50.00 or 90 days' imprisonment".

(b) Provide and locate near each elevator entrance at each floor a noncombustible receptacle approved by the bureau of fire services created in section 1b of the fire prevention code, 1941 PA 207, MCL 29.1b, for the proper disposal of cigar and cigarette stubs, pipe ash, or lighted tobacco in any form.

History: 1967, Act 227, Eff. Nov. 2, 1967;—Am. 2006, Act 202, Imd. Eff. June 19, 2006.

Compiler's note: For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.821 Violations of act or rules; penalties.

Sec. 21. (1) Except as provided in subsection (2), a person, firm, or corporation who violates this act or a rule promulgated by the board, or who fails or neglects to pay the fees authorized in this act, shall be punished for the first offense by a fine of not more than \$50.00, and for each subsequent offense by a fine of not more than \$100.00, or imprisonment in the county jail for not more than 90 days, or both.

(2) A member of the elevator safety board who intentionally violates section 8(2) with regard to a meeting shall be subject to the penalties provided in Act No. 267 of the Public Acts of 1976 for violations of that act.

(3) A person, firm, or corporation who operates or continues to operate an elevator, sealed out of service, without the approval of the director shall be punished by a fine not to exceed \$25.00 for each day the elevator is operated without the approval in addition to the penalties provided in subsection (1).

History: 1967, Act 227, Eff. Nov. 2, 1967;—Am. 1977, Act 191, Imd. Eff. Nov. 17, 1977.

408.822 Saving clause.

Sec. 22. A prosecution arising from a violation of the act repealed herein pending at the time this act becomes effective, or a prosecution which may be started within 1 year after the effective date of this act in consequence of any violation of the repealed act which was committed previous to the effective date of this act, shall be tried and determined as if such act had not been repealed.

History: 1967, Act 227, Eff. Nov. 2, 1967.

408.823 Repeals.

Sec. 23. Act No. 82 of the Public Acts of 1937, as amended, being sections 408.351 to 408.374 of the Compiled Laws of 1948, is repealed.

History: 1967, Act 227, Eff. Nov. 2, 1967.

408.824 Elevator safety board; membership, rules and fees, continuation.

Sec. 24. The membership of the board as now constituted shall continue to serve in accordance with their terms of office and the rules and fees heretofore established in Act No. 360 of the Public Acts of 1965, as amended, being sections 408.364 and 408.365 of the Compiled Laws of 1948, shall remain in full force and effect until the board shall appropriately revise, change or amend them, anything to the contrary herein contained notwithstanding.

History: 1967, Act 227, Eff. Nov. 2, 1967.

OCCUPATIONAL SAFETY Act 282 of 1967

408.851-408.868 Repealed. 1974, Act 154, Eff. Jan. 1, 1975.

FULL EMPLOYMENT PLANNING ACT OF 1978
Act 609 of 1978

AN ACT to establish full employment as a state priority; to provide for the formulation of a biennial employment plan and an annual report, and to establish mechanisms for implementation of that plan; and to prescribe certain duties and responsibilities for the governor, the legislature, the fiscal agencies of the legislature, the state board of education, the department of social services, the department of labor, and the state supported institutions of higher education.

History: 1978, Act 609, Eff. Mar. 30, 1979;—Am. 1981, Act 131, Imd. Eff. Oct. 5, 1981.

The People of the State of Michigan enact:

408.901 Short title.

Sec. 1. This act shall be known and may be cited as the “full employment planning act of 1978”.

History: 1978, Act 609, Eff. Mar. 30, 1979.

408.902 Definitions.

Sec. 2. As used in this act:

(a) “Employability services” means an activity which increases the employment potential of an individual, and includes career and vocational education, training, work experience, relocation, and physical rehabilitation.

(b) “Employment plan” means the full employment plan required by section 3.

(c) “Full employment” means the highest level of employment which would provide an employment opportunity for every person able and willing to work, which, consistent with other public needs, can be attained during a given period of time by maximizing the investment of public resources toward that end.

(d) “Subsidized employment” means employment in the private or public sector which results from a direct government payment for all or part of employee wages or benefits in an employment and training program.

(e) “Unsubsidized employment” means employment in the private or public sector which does not result from a direct government payment for all or part of employee wages or benefits in an employment and training program.

History: 1978, Act 609, Eff. Mar. 30, 1979.

408.903 Annual report; contents; employment plan; submission to governor and legislature; cooperation and assistance of departments; report of federal decisions.

Sec. 3. (1) Not later than November 1, 1981 and annually thereafter, the department of labor shall submit to the governor a report setting forth projections for the immediately subsequent 5 years which includes all of the following:

(a) Projected trends in the levels of employment, production, and purchasing power, and a review of economic conditions affecting these economic trends.

(b) Projected levels and types of employment available in both the private and public sectors.

(c) Projected levels and characteristics of the labor force in this state.

(d) Projected levels of unemployment by type and area.

(e) The identity by race, age, sex, occupation, education, income, and geographic location of persons in this state who will not be provided a job opportunity or commensurate employability service as identified in subdivision (b) and subsection (8), and who will require income support, other supportive services, or both.

(f) Full supporting social and economic data upon which mandatory statements required by subdivisions (a) to (e) are based, including demographics, labor force statistics and characteristics, and additional data upon which the statements are based. To the degree feasible, the data shall include indicators which clearly depict the distribution of social and economic benefits by race, age, sex, income, residence, and other relevant demographic characteristics.

(g) A status report of the recommendations in the biennial employment plan submitted by the governor in accordance with subsection (6).

(2) On November 1, 1981, and on every even numbered year thereafter, the department of labor shall submit to the governor an employment plan setting forth recommendations by priority for all of the following:

(a) Increasing the number of unsubsidized employment opportunities.

(b) Increasing the employability of the unskilled, low-skilled, and obsoletely skilled members of the labor force.

(c) Creating subsidized job opportunities that will provide labor for the production of essential goods or

services.

(d) Increasing the effectiveness of the public education system in equipping youth with skills, attitudes, and experiences necessary for a successful transition to the labor force.

(e) Legislation, which if enacted, would cause the creation of new employment opportunities or the retention of existing employment.

(3) The recommendations referred to in subsection (2) which require the appropriation of funds shall be supported by a concise statement of resource requirements. Other recommendations shall be supported by sufficient explanation to enable the legislature to clearly understand the course of action to be taken and the agency which has been, or will be, charged by the governor to carry out the proposed action.

(4) The department of labor and the department of social services shall include, as a part of the initial submission of the employment plan to the governor, a report analyzing the relationship of income maintenance programs and the full employment policies of this act.

(5) Not later than 10 days after the legislature convenes in January of 1982, and annually thereafter, the governor shall transmit to the legislature a report which meets the requirements prescribed in subsection (1).

(6) Not later than 10 days after the legislature convenes in January of 1982, and in every odd numbered year thereafter, the governor shall transmit to the legislature a full employment plan which meets the requirements prescribed in subsections (2) and (3).

(7) Each state department shall cooperate and assist the department of labor in the collection and analysis of data, and in advising of priorities and recommended courses of action to achieve the goals and objectives set forth in the biennial employment plan and the annual report required by subsection (1).

(8) The governor shall annually submit to the legislature a report which lists with appropriate description, quantification, and dollar value, all federal decisions which will affect employment or which will provide for the financing of goods or services in this state.

History: 1978, Act 609, Eff. Mar. 30, 1979;—Am. 1981, Act 131, Imd. Eff. Oct. 5, 1981.

408.904 Employment plan; review by governor; index; relationship of plan to presidential federal report on economic goals and policies.

Sec. 4. (1) The governor shall review the employment plan prescribed in section 3 and may seek advice or request review from institutions of higher education or from economic research and policy groups as the governor considers necessary.

(2) The executive budget shall include an index which references aspects of the employment plan to the budget by the budget's page number, department, and program.

(3) The governor shall include, as part of the initial submission of the employment plan to the legislature, a section analyzing the plan's relationship to the presidential federal report on economic goals and policies as provided for in the full employment and balanced growth act of 1978.

History: 1978, Act 609, Eff. Mar. 30, 1979.

408.905 Employment plan; legislative alteration or rejection.

Sec. 5. If the legislature does not alter or reject the employment plan by concurrent resolution within 90 days after submission of the plan in accordance with section 4, the employment plan as submitted shall become effective.

History: 1978, Act 609, Eff. Mar. 30, 1979.

408.906 Reports by directors of senate and house fiscal agencies.

Sec. 6. The directors of the senate and house fiscal agencies shall issue periodic joint reports to each member of the legislature detailing and tabulating the progress of legislative action on bills and resolutions which provide new budget authority or which change revenues for the fiscal year under consideration. The reports shall include all of the following:

(a) An up-to-date tabulation comparing new appropriations made for the fiscal year in bills and resolutions on which the legislature has completed action and estimated outlays associated with the appropriations bills or resolutions necessary for the new appropriations, explicit or implicit, in the employment plan.

(b) An up-to-date status report on all bills and resolutions making an appropriation or changing revenues.

(c) Other data relative to legislative action which the directors consider necessary or appropriate for use by the legislature in implementing and carrying out the purposes of this act.

History: 1978, Act 609, Eff. Mar. 30, 1979.

408.907 Report of governor to legislature.

Sec. 7. (1) Not more than 60 days after the effective date of this act, the governor shall report to the

legislature all of the following:

- (a) Measures taken by the governor to implement this act.
- (b) Measures recommended by the governor which require legislation.
- (c) Requests for appropriations necessary to implement this act.

(2) The measures to be included in the report referred to in subsection (1) include the establishment, disestablishment, transfer, or other reorganization of the executive branch of state government; the assignment or reassignment of organizational roles and responsibilities; and a description of major management systems and management information systems established, disestablished, or modified. Each of these measures shall be supported with a financial plan or financial impact statement.

History: 1978, Act 609, Eff. Mar. 30, 1979.

408.908 Measures to ensure meeting of information requirements; initiation by governor.

Sec. 8. The governor shall initiate measures to ensure that the information requirements of the legislature are fully met. Measures taken to achieve the purposes of this section shall include all of the following:

- (a) Standardization of data to ensure data compatibility for the purpose of analysis and comparison.
- (b) Establishment of the capability to report geographically arrayed data by a county or city with a population of 100,000 or more, and, when aggregation is necessary or desirable, by a state planning region.
- (c) Other measures considered necessary by the legislature.

History: 1978, Act 609, Eff. Mar. 30, 1979.

408.909 Biennial labor market supply report; contents; compliance with reporting requirements and procedures.

Sec. 9. (1) In conjunction with the directors of the senate and house fiscal agencies, the legislature shall develop a biennial labor market supply report for the previous year, the current year, the budget year, and for 4 more years thereafter, the actual plan and estimated persons, by age, race, sex, skill, grade, or degree level, who have left or completed, or who will leave or complete, their enrollment in all state educational, vocational, skill training courses, schools, and institutions, private or public, operating in this state. The report shall be presented in November of 1981, and every odd year thereafter.

(2) Each state educational, vocational, or training school and institution, including the institutions of higher education which are supported by public funds or which are licensed by the state, shall comply with the reporting requirements and procedures established by the legislature for the purpose of preparing the report required by subsection (1).

History: 1978, Act 609, Eff. Mar. 30, 1979;—Am. 1981, Act 131, Imd. Eff. Oct. 5, 1981.

MICHIGAN OCCUPATIONAL SAFETY AND HEALTH ACT

Act 154 of 1974

AN ACT to prescribe and regulate working conditions; to prescribe the duties of employers and employees as to places and conditions of employment; to create certain boards, commissions, committees, and divisions relative to occupational and construction health and safety; to prescribe their powers and duties and powers and duties of the department of labor and department of public health; to prescribe certain powers and duties of the directors of the departments of labor, public health, and agriculture; to impose an annual levy to provide revenue for the safety education and training division; to provide remedies and penalties; to repeal certain acts and parts of acts; and to repeal certain acts and parts of act on specific dates.

History: 1974, Act 154, Eff. Jan. 1, 1975;—Am. 1986, Act 80, Imd. Eff. Apr. 7, 1986;—Am. 1986, Act 147, Imd. Eff. July 2, 1986.

Compiler's note: In the last sentence of this title, “act” evidently should read “acts”.

The People of the State of Michigan enact:

408.1001 Short title.

Sec. 1. This act shall be known and may be cited as the “Michigan occupational safety and health act”.

History: 1974, Act 154, Eff. Jan. 1, 1975.

Compiler's note: For transfer of powers and duties of the division of occupational health in the bureau of environmental and occupational health, with the exception of dry cleaning unit, from the department of public health to the director of the department of labor, see E.R.O. No. 1996-1, compiled at MCL 330.3101 of the Michigan Compiled Laws.

For transfer of powers and duties relating to the promulgation of rules by the general industry safety standards commission, the construction safety standards commission, the occupational health standards commission, and the board of health and safety compliance and appeals from the department of labor to the director of the department of consumer and industry services, see E.R.O. No. 1996-2, compiled at MCL 445.2001 of the Michigan Compiled Laws.

408.1002 Scope of act; effect on statutory or common law.

Sec. 2. (1) This act shall apply to all places of employment in the state, except in domestic employment and in mines as defined in section 4.

(2) Nothing in this act shall be construed to supersede or in any manner affect any workers' compensation law, or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of, employment.

History: 1974, Act 154, Eff. Jan. 1, 1975;—Am. 1979, Act 149, Eff. Mar. 27, 1980.

408.1003 Meanings of words and phrases.

Sec. 3. The words and phrases defined in sections 4 to 6 have the meanings respectively ascribed to them for the purposes of this act.

History: 1974, Act 154, Eff. Jan. 1, 1975.

408.1004 Definitions; A to M.

Sec. 4. (1) “Agricultural operations” means the work activity designated in major groups 01 and 02 of the standard industrial classification manual, United States bureau of the budget, 1972 edition. Agricultural operations include any practices performed by a farmer or on a farm as an incident to or in conjunction with farming operations including preparation for market delivery to storage or market or to carriers for transportation to market.

(2) “Authorized employee representative” or “representative of employee” means a person designated by a labor organization certified by the national labor relations board or employment relations commission as defined in section 2(c) of Act No. 176 of the Public Acts of 1939, as amended, being section 423.2 of the Michigan Compiled Laws, as the bargaining representative for the affected employees. In the absence of certification, it shall be a person designated by the organization having a collective bargaining relationship with the employer and designated as having a collective bargaining relationship with the employer by the affected employees. If a labor organization has not been certified, or if no organization has a collective bargaining relationship with the employer, “authorized employee representative” or “representative of employee” means a person designated by the affected employees to represent them for the purpose of proceedings under this act.

(3) “Board” means the board of health and safety compliance and appeals created in section 46.

(4) “Construction operations” means the work activity designated in major groups 15, 16, and 17 of the standard industrial classification manual, United States bureau of the budget, 1972 edition.

(5) "Department attorney" means the attorney general or the authorized representative of the attorney general.

(6) "Domestic employment" means that employment involving an employee specifically employed by a householder to engage in work or an activity relating to the operation of a household and its surroundings, whether or not the employee resides in the household.

(7) "Mines", except as provided in subdivision (d), means all of the following:

(a) An area of land from which minerals are extracted in nonliquid form, or if in liquid form, are extracted with workers underground.

(b) Private ways and roads appurtenant to an area of land described in subdivision (a).

(c) Lands, excavations, underground passageways, shafts, slopes, tunnels and workings, structures, facilities, equipment, machines, tools, or other property, including impoundments, retention dams, and tailings ponds, on the surface or underground, used in, or to be used in, or resulting from, the work of extracting minerals from their natural deposits in nonliquid form, or if in liquid form, with workers underground, or used in, or to be used in, the milling of minerals, or the work of preparing coal or other minerals, and includes custom coal preparation facilities.

(d) This subsection does not include industrial borrow pits, or sand, gravel, or crushed and dimension stone quarrying operations, or surface construction operations.

History: 1974, Act 154, Eff. Jan. 1, 1975;—Am. 1977, Act 300, Eff. Mar. 30, 1978;—Am. 1979, Act 149, Eff. Mar. 27, 1980.

408.1005 Definitions; E to I.

Sec. 5. (1) "Employee" means a person permitted to work by an employer.

(2) "Employer" means an individual or organization, including the state or a political subdivision, which employs 1 or more persons.

(3) "Imminent danger" means a condition or practice in a place of employment which is such that a danger exists which could reasonably be expected to cause death or serious physical harm either immediately or before the imminence of the danger can be eliminated through the enforcement procedures otherwise provided. A container of an unknown and unlabeled chemical or a container of hazardous chemicals that is not labeled or for which a material safety data sheet is not available as required by the standard incorporated by reference in section 14a shall be considered an imminent danger after meeting the provisions of section 31.

(4) "Inspection" means the examination or survey of a place of employment to detect the presence of an existing or potential occupational safety or health hazard or to determine compliance with this act, rules or standards promulgated, or orders issued pursuant to this act.

(5) "Investigation" means the detailed evaluation or study of working conditions, including equipment, processes, substances, air contaminants, or physical agents with respect to the actual or potential occurrence of occupational accidents, illnesses, or diseases.

History: 1974, Act 154, Eff. Jan. 1, 1975;—Am. 1986, Act 80, Imd. Eff. Apr. 7, 1986.

408.1006 Definitions; P to W.

Sec. 6. (1) "Place of employment" means a factory, plant, establishment, construction site or other similar area, workplace, or environment where an employee is permitted to work.

(2) "Political subdivision" means a city, village, township, county, school district, intermediate school district, or state or local government authorized or supported agency, authority, or institution.

(3) "Rule" means a rule as defined by section 7 of Act No. 306 of the Public Acts of 1969, being section 24.207 of the Michigan Compiled Laws. A rule may only be promulgated by the director of labor or director of health except as otherwise specifically prescribed in this act.

(4) "Serious violation" means a violation of this act, an order issued pursuant to this act, or a rule or standard promulgated under this act or adopted by reference pursuant to this act for which a substantial probability exists that death or serious physical harm could result from the violation or from a practice, means, method, operation, or process which is in use, unless the employer did not and could not, with the exercise of reasonable diligence, know of the presence of the violation.

(5) "Standard" means a health or safety standard which specifies conditions, or the adoption or use of 1 or more practices, means, methods, operations, or processes necessary to provide safe and healthful employment in places of employment. Except as otherwise specifically prescribed in this act, only the:

(a) General industry safety standards commission may promulgate a standard relative to occupational safety.

(b) Construction safety standards commission may promulgate a standard relative to construction safety.

(c) Occupational health standards commission may promulgate a standard relative to occupational health.

(6) "Standards promulgation commission" means the general industry safety standards commission, the

construction safety standards commission, or the occupational health standards commission.

(7) "Trade secret" means a confidential process, formula, pattern, device, or compilation of information which is used in the employer's business and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.

(8) "Wilful", for the purpose of criminal prosecutions, means the intent to do an act knowingly and purposely by an individual who, having a free will and choice, either intentionally disregards a requirement of this act, or a rule or standard promulgated pursuant to this act, or is knowingly and purposely indifferent to a requirement of this act, or a rule or standard promulgated pursuant to this act. An omission or failure to act is wilful if it is done knowingly and purposely. Wilful does not require a showing of moral turpitude, evil purpose, or criminal intent provided the individual is shown to have acted or to have failed to act knowingly and purposely.

(9) "Working day" means any day other than a Saturday, Sunday, or state legal holiday.

History: 1974, Act 154, Eff. Jan. 1, 1975;—Am. 1977, Act 300, Eff. Mar. 30, 1978;—Am. 1978, Act 455, Imd. Eff. Oct. 16, 1978.

408.1009 Legislative declaration.

Sec. 9. The safety, health, and general welfare of employees are primary public concerns. The legislature hereby declares that all employees shall be provided safe and healthful work environments free of recognized hazards.

History: 1974, Act 154, Eff. Jan. 1, 1975.

408.1011 Duties of employer.

Sec. 11. An employer shall:

(a) Furnish to each employee, employment and a place of employment which is free from recognized hazards that are causing, or are likely to cause, death or serious physical harm to the employee.

(b) Comply with this act and with the rules and standards promulgated and the orders issued pursuant to this act.

(c) Post notices and use other appropriate means to keep his or her employees informed of their protections and obligations under this act, including applicable rules and standards.

(d) Provide personal protective equipment at the employer's expense when it is specifically required to be provided at the employer's expense in a rule or a standard promulgated by a standards promulgating commission. When promulgating a rule or a standard concerning personal protective equipment, the standards promulgating commission shall use at least the following criteria in determining who should pay for the equipment:

(i) Whether the equipment is transferable between employees.

(ii) Whether the equipment is maintained by the employer.

(iii) Whether the equipment generally remains at the work site after the work activity has been completed.

(iv) The amount of personal use involved with the equipment.

(v) Any other criteria deemed applicable by the standards promulgating commission.

History: 1974, Act 154, Eff. Jan. 1, 1975;—Am. 1979, Act 149, Eff. Mar. 27, 1980;—Am. 1980, Act 51, Imd. Eff. Mar. 25, 1980;—Am. 1986, Act 80, Eff. May 25, 1986.

408.1012 Duties of employee.

Sec. 12. An employee shall:

(a) Comply with rules and standards promulgated, and with orders issued pursuant to this act.

(b) Not remove, displace, damage, destroy, or carry off a safeguard furnished or provided for use in a place of employment, or interfere in any way with the use thereof by any other person.

History: 1974, Act 154, Eff. Jan. 1, 1975.

408.1013 Administration and enforcement; reports.

Sec. 13. (1) The department of labor shall administer and enforce the provisions of this act relative to occupational safety.

(2) The department of public health shall administer and enforce the provisions of this act relative to occupational health.

(3) The department of labor and department of public health shall report annually by January 31 in writing to the committees on labor and public health of the house of representatives and committees on labor and health, social services and retirement of the senate specifying the provisions of this act where the authority of the departments overlap, and all agreements and administrative procedures to coordinate joint enforcement of the act. Any changes in these agreements or administrative procedures must be reported in writing to the

committees on labor and public health of the house of representatives and committees on labor and health, social services and retirement of the senate within 15 days of the changes.

History: 1974, Act 154, Eff. Jan. 1, 1975;—Am. 1977, Act 233, Imd. Eff. Nov. 30, 1977;—Am. 1978, Act 455, Imd. Eff. Oct. 16, 1978.

408.1014 Federal standards incorporated by reference; force and effect; conflicts; copies of standard; processing proposed rule substantially similar to federal standard; compliance with administrative procedures act of 1969.

Sec. 14. (1) Except as otherwise provided in subsection (3), the occupational safety and health standards that have been adopted or promulgated by the United States department of labor under the occupational safety and health act of 1970, Public Law 91-596, 84 Stat. 1590, and that are in effect on January 1, 1975 are incorporated by reference and have the same force and effect as a rule promulgated pursuant to this act. A standard that is incorporated by reference pursuant to this subsection remains in effect until either of the following conditions occurs:

(a) A standard is promulgated pursuant to this act that covers the same or a similar subject.

(b) The standard is rescinded by rule promulgated pursuant to this act.

(2) When a rule or standard that is continued pursuant to section 24(3) conflicts with or covers the same or similar subject as a standard incorporated by reference pursuant to subsection (1), the federal standard incorporated by reference governs and the state rule or standard continued pursuant to section 24(3) shall be rescinded.

(3) When a rule or standard that is continued in effect under this act pursuant to section 21(1) covers the same subject as a federal standard, subsection (1) does not apply.

(4) The department of labor and the department of public health shall determine which of them is responsible for administering and enforcing each of the standards incorporated by reference pursuant to subsection (1).

(5) The department of labor or the department of public health, whichever is responsible for administering and enforcing a standard incorporated by reference pursuant to subsection (1), shall make copies of the standard available to the public at cost.

(6) Beginning April 1, 1992, not later than 10 working days after the date that the United States department of labor adopts or promulgates an occupational safety and health standard under the occupational safety and health act of 1970, Public Law 91-596, 84 Stat. 1590, the director of labor or the director of public health, or both, shall initiate the processing of an administrative rule that is substantially similar to the federal occupational safety and health standard. The proposed administrative rule shall be presented to the joint committee on administrative rules unless 1 of the following occurs:

(a) The general industry safety standards commission determines and certifies that the federal standard is clearly inconsistent with the criteria set forth in sections 9 and 16.

(b) The construction safety standards commission determines and certifies that the federal standard is clearly inconsistent with the criteria set forth in sections 9 and 19.

(c) The occupational health standards commission determines and certifies that the federal standard is clearly inconsistent with the criteria set forth in sections 9 and 24.

(7) Beginning April 1, 1992, a proposed administrative rule that would address a matter not addressed by 1 or more federal standards shall not be processed and presented to the joint committee on administrative rules unless the appropriate standards commission determines and certifies that there is a clear and convincing need for the standard to meet the criteria set forth, as appropriate, in sections 9, 16, 19, and 24.

(8) The administrative rules described in subsections (6) and (7) shall be promulgated pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

History: 1974, Act 154, Eff. Jan. 1, 1975;—Am. 1991, Act 105, Imd. Eff. Oct. 3, 1991.

Administrative rules: R 325.2401 et seq.; R 325.18301 et seq.; R 325.35001 et seq.; R 325.52501 et seq.; and R 325.70101 et seq. of the Michigan Administrative Code.

408.1014a Occupational safety and health hazard communication standard; incorporation by reference; applicability of standard; conflicting provisions; administration and enforcement of standards; duties of employers; exception.

Sec. 14a. (1) The occupational safety and health hazard communication standard that has been adopted or promulgated by the United States department of labor and has been codified at 29 C.F.R. 1910.1200 as of the effective date of the amendatory act that adds this section is incorporated by reference and shall have the same force and effect as a rule promulgated pursuant to this act. In addition to the standard incorporated by

reference in this subsection, sections 14b to 14 l shall apply to an employer subject to this act. The applicability of the standard incorporated by reference in this subsection and of sections 14b to 14l is subject to subsections (4), (5), (6), and (7).

(2) When a rule or standard that is continued pursuant to section 24(3) is in conflict with or covers the same or similar subject as a standard incorporated by reference pursuant to subsection (1), the federal standard so incorporated by reference shall govern, and the state rule or standard continued pursuant to section 24(3) is rescinded.

(3) The department of labor shall administer and enforce the provisions of the standard incorporated by reference in subsection (1) relative to occupational safety. The department of public health shall administer and enforce the provisions of the standard incorporated by reference in subsection (1) relative to occupational health. The departments of public health and labor shall administer and enforce the provisions of the standard incorporated by reference in subsection (1) in a manner that is consistent with the administration and enforcement of the standard by the federal occupational safety and health administration.

(4) Beginning November 25, 1985, employers who are chemical manufacturers in a standard industrial classification of 20 through 39 of the standard industrial classification code published by the federal department of management and budget, importers, and distributors shall label containers of hazardous chemicals leaving their workplaces, provide material safety data sheets with initial shipments, and otherwise comply with any applicable provision of the standard incorporated by reference pursuant to subsection (1) and of sections 14b to 14l. A chemical manufacturer, importer, or distributor subject to this subsection shall provide a material safety data sheet and an appropriately labeled container to each employer in this state, regardless of the employer's standard industrial classification in the standard industrial classification code, who purchases a hazardous chemical.

(5) Beginning May 25, 1986, an employer in a standard industrial classification of 20 through 39 of the standard industrial classification code published by the federal department of management and budget shall comply with the requirements of the standard incorporated by reference pursuant to subsection (1) and with sections 14b to 14l with respect to the use of hazardous chemicals in the workplace.

(6) Beginning February 25, 1987, an employer who is subject to this act but who is not otherwise specifically described in subsections (4) and (5) shall comply with the requirements of the standard incorporated by reference pursuant to subsection (1) and with sections 14b to 14 l with respect to the use of hazardous chemicals in the workplace. However, instead of complying with any conflicting provision of the standard incorporated by reference in subsection (1), an employer who is described in this subsection is required:

(a) To provide information and training only to employees who are exposed to hazardous chemicals in the normal course of employment or who are likely to be exposed to hazardous chemicals in the event of an emergency.

(b) In the case where a hazardous chemical is mixed or combined with any other chemical or hazardous chemical by the employer, to maintain and provide a material safety data sheet for each constituent hazardous chemical and to maintain a material identification system that identifies to employees the appropriate material safety data sheets.

(7) The standard incorporated by reference in subsection (1), this section, and sections 14b to 14 l shall not be construed to require an employer in a standard industrial classification other than 20 through 39 of the standard industrial classification code published by the federal department of management and budget to evaluate chemicals, to develop labels for containers of hazardous chemicals, or to develop material safety data sheets.

History: Add. 1986, Act 80, Imd. Eff. Apr. 7, 1986.

408.1014b Disclosure of specific chemical identity.

Sec. 14b. In nonemergency situations, a chemical manufacturer, importer, or employer claiming a trade secret, upon request, shall disclose a specific chemical identity, otherwise permitted to be withheld under the standard incorporated by reference in section 14a, in addition to a health professional as specified in 29 C.F.R. 1910.1200(i)(3), to an occupational health nurse providing medical or other occupational health services to exposed employees, to an authorized employee representative of an exposed employee, and to an exposed employee, if the occupational health nurse, the representative, and the employee comply with the requirements described in 29 C.F.R. 1910.1200(i)(3) and (4).

History: Add. 1986, Act 80, Imd. Eff. Apr. 7, 1986.

408.1014c Identification of pipes and piping systems in workplace; establishment of pipe and stationary process container entry procedure; applicable provisions.

Sec. 14c. Pipes or piping systems in a workplace that contain a hazardous chemical shall be identified to an employee by a label or by a sign, placard, written operating instructions, process sheet, batch ticket, or a substance identification system that conveys the same information required to be displayed on a label by the standard incorporated by reference in section 14a. The employer shall provide at least 1 label, sign, placard, set of written operating instructions, process sheet, batch ticket, or a substance identification system selected by the employer and readily accessible to each employee at a location in the workplace designated by the employer. The employer shall establish a pipe and stationary process container entry procedure that will assure that the information required by 29 C.F.R. 1910.1200(f) is conveyed to an employee before entry. The requirements of this subsection shall apply in addition to the occupational safety and health hazard communication standard incorporated by reference in section 14a.

History: Add. 1986, Act 80, Imd. Eff. Apr. 7, 1986.

408.1014d Trade secret claims; petition; review; confidentiality; determination; final order; revocation of order; hearing; exemption of records and information from disclosure under freedom of information act; providing director with specific chemical identity and percentage composition of hazardous chemical.

Sec. 14d. (1) Upon request of the director of the department of public health, an employer who claims a trade secret under the standard incorporated by reference by section 14a shall support the trade secret claim. Subject to subsection (2), the director shall consider the following factors in determining whether a specific chemical identity may be withheld as a trade secret:

- (a) The extent to which the information is known outside the employer's business.
- (b) The extent to which it is known by employees and others involved in the employer's business.
- (c) The extent of measures taken by the employer to guard the secrecy of the information.
- (d) The value of the information to the employer and the employer's competitors.
- (e) The amount of effort and money expended by the employer in developing the information.
- (f) The ease or difficulty with which the information could be properly acquired or duplicated by others.

(2) The determination made by the director under subsection (1) shall not uphold as a trade secret any chemical identity information that is readily discoverable through reverse engineering.

(3) This section shall not be construed to require the prior approval of trade secret claims by the director of the department of public health or the director of the department of labor.

(4) An exposed employee, a health professional providing medical or other occupational health services to exposed employees, or an authorized employee representative of an exposed employee may petition the director of the department of public health to review a denial of a written request for disclosure of a specific chemical identity. This review shall be conducted as a contested case pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, and shall be confidential. The director shall review the assertion of trade secrecy and make a determination in accordance with the principles provided in this section and the standard incorporated by reference in section 14a. In preparing the final order, the director shall consider and require any prudent measures necessary to protect the health of employees or the public in general while maintaining the confidentiality of any trade secrets.

(5) The director of public health may revoke any order entered under subsection (4) upholding a trade secret claim after a hearing involving the parties of interest upon showing that a party has not complied with an order issued pursuant to subsection (4).

(6) Records and information obtained by any department, commission, or public agency related to a review by the director of public health under subsection (4) and to information determined by the director to be a trade secret in that review shall be exempt from disclosure under the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(7) Notwithstanding that information has been claimed as a trade secret pursuant to 29 C.F.R. 1910.1200(i) or has been upheld by the director as a trade secret pursuant to this section, a chemical manufacturer, importer, or employer shall provide the specific chemical identity and percentage composition of a hazardous chemical to the director of public health when the director requests that information in the discharge of the director's duties under this act.

History: Add. 1986, Act 80, Imd. Eff. Apr. 7, 1986.

408.1014e Public service announcements.

Sec. 14e. In order to educate employers, employees, and the public about the hazards of exposure to hazardous chemicals and the requirements of the occupational safety and health hazard communication standard incorporated by reference in section 14a and the requirements of sections 14b to 14l, the departments

of public health and labor shall distribute periodically public service announcements to newspapers and television and radio stations throughout this state.

History: Add. 1986, Act 80, Imd. Eff. Apr. 7, 1986.

408.1014f Employer engaged in agricultural operations; compliance; certifying list of chemicals.

Sec. 14f. (1) An employer engaged in agricultural operations is not required to comply with the standard incorporated by reference in section 14a or sections 14b to 14l for a hazardous chemical that is regulated under the federal insecticide, fungicide, and rodenticide act, chapter 125, 86 Stat. 973, 7 U.S.C. 136 to 136i and 136j to 136y, or part 83 (pesticide control) of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being sections 324.8301 to 324.8336 of the Michigan Compiled Laws, and any rules or regulations promulgated under those acts.

(2) The director of the department of agriculture at least annually shall certify to the department of public health a list of chemicals regulated by the acts described in subsection (1).

History: Add. 1986, Act 80, Imd. Eff. Apr. 7, 1986;—Am. 1996, Act 70, Imd. Eff. Feb. 26, 1996.

Administrative rules: R 285.633.1 et seq. and R 285.636.1 et seq. of the Michigan Administrative Code.

408.1014g Chemical in sealed package in transit by common carrier.

Sec. 14g. An employer is not required to comply with the standard incorporated by reference in section 14a or with sections 14b to 14l with respect to a chemical in a sealed package and in transit by a common carrier if the seal remains intact while in transit.

History: Add. 1986, Act 80, Imd. Eff. Apr. 7, 1986.

408.1014h Employer engaged in construction operations.

Sec. 14h. An employer engaged in construction operations may satisfy the requirements of the standard incorporated in section 14a and sections 14b to 14l that a material safety data sheet be maintained for each hazardous chemical in the workplace by maintaining material safety data sheets in 1 or more central locations at a job site.

History: Add. 1986, Act 80, Imd. Eff. Apr. 7, 1986.

408.1014i Plan for executing responsibilities of organized fire department.

Sec. 14i. The chief of each organized fire department shall prepare and disseminate to each fire fighting employee of the organized fire department a plan for executing the department's responsibilities with respect to each site within the organized fire department's jurisdiction where hazardous chemicals are used or produced.

History: Add. 1986, Act 80, Imd. Eff. Apr. 7, 1986.

408.1014j Signs throughout workplace; contents.

Sec. 14j. An employer subject to the standard incorporated by reference in section 14a and to sections 14b to 14l shall post signs throughout the workplace advising employees of all of the following:

(a) The location of the material safety data sheets for the hazardous chemicals produced or used in the workplace and the name of the person from whom to obtain the sheets.

(b) That the employer is prohibited from discharging or discriminating against an employee who exercises the rights regarding information about hazardous chemicals in the workplace afforded by the standard incorporated by reference in section 14a and by sections 14b to 14l.

(c) That, as an alternative to requesting the employer for a material safety data sheet for a hazardous chemical in the workplace, the employee may obtain a copy of the material safety data sheet from the department of public health. The sign shall include the address and telephone number of the division of the department of public health that has the responsibility of responding to such requests.

History: Add. 1986, Act 80, Imd. Eff. Apr. 7, 1986.

408.1014k Material safety data sheets for hazardous chemicals in workplace; organization; training employees; notice of new or revised sheets.

Sec. 14k. (1) An employer who is subject to the standard incorporated by reference in section 14a and to sections 14b to 14l shall organize the material safety data sheets for the hazardous chemicals in the workplace in a systematic and consistent manner and shall train employees in locating particular material safety data sheets.

(2) Not later than 5 working days after receipt of a new or a revised material safety data sheet, the

employer shall post for a period of 10 working days a notice of the existence of the new or revised sheet and directions for locating the new or revised sheet according to the method used by the employer for organizing material safety data sheets.

History: Add. 1986, Act 80, Imd. Eff. Apr. 7, 1986.

408.1014/ Failure to provide exposed employee with access to most current material safety data sheet.

Sec. 14l. The failure of an employer who is subject to the standard incorporated by reference in section 14a and to this section and sections 14b to 14k to provide an exposed employee with access to the most current material safety data sheet available to the employer shall not be considered by the department as a violation for which a de minimis notice of violation may be issued under section 33(5). The department may consider such a violation to be a serious violation or a violation not of a serious nature for which a citation may be issued under section 35.

History: Add. 1986, Act 80, Imd. Eff. Apr. 7, 1986.

408.1014m Conflicting provisions unenforceable.

Sec. 14m. The standard incorporated by reference in section 14a and sections 14b to 14l occupy the entire field of regulation of occupational safety and health with respect to hazardous chemicals in the workplace. Except as specifically provided in this act, any provision of any ordinance, law, rule, regulation, policy, or practice of a city, township, village, county, governmental authority created by statute, or other political subdivision of the state that imposes any requirement on an employer or expands the rights of an employee with respect to the communication of the hazards of hazardous chemicals in the workplace shall be considered in conflict with this act and shall not be enforceable.

History: Add. 1986, Act 80, Imd. Eff. Apr. 7, 1986.

408.1014n Federal occupational safety and health field sanitation standard; incorporation by reference; effect; providing potable water, toilet facility, and hand washing facility for agricultural employees; administration and enforcement of incorporated standard; copies of standard.

Sec. 14n. (1) Except as provided in subsections (2) and (3), the occupational safety and health field sanitation standard that has been adopted or promulgated by the United States department of labor and has been codified at 29 C.F.R. 1928.110 as of April 1, 1991 is incorporated by reference and supersedes the occupational health field sanitation standard as prescribed in R 325.61751 to R 325.61757 of the Michigan administrative code, and has the same force and effect as a rule promulgated pursuant to this act.

(2) An agricultural employer shall provide, at no cost to the agricultural employee, potable water in locations that are readily accessible to all agricultural employees.

(3) An agricultural employer employing less than 11 agricultural employees shall ensure that an available toilet facility and hand-washing facility is either provided by the agricultural employer or available to the agricultural employee.

(4) The department of public health shall administer and enforce the standard incorporated by reference in subsection (1) in a manner that is consistent with the administration and enforcement of the standard by the federal occupational safety and health administration.

(5) The department of public health shall make copies of the standard described in subsection (1) and the requirements of subsections (2) and (3) available to the public at cost.

History: Add. 1991, Act 6, Imd. Eff. Apr. 11, 1991;—Am. 1991, Act 105, Imd. Eff. Oct. 3, 1991.

408.1015 General industry safety standards commission; creation; director of labor as secretary; appointment, qualifications, and terms of members; vacancy; election of chairman and officers; quorum; meetings; compensation and expenses.

Sec. 15. (1) The general industry safety standards commission is created in the department of labor.

(2) The general industry safety standards commission consists of the director of labor ex officio without vote who shall serve as secretary of the general industry safety standards commission and 9 members appointed by the governor by and with the advice and consent of the senate. The term of each appointed member shall be for 3 years or until his or her successor is appointed and qualified. Of those members initially appointed, 2 persons who represent labor and 2 persons who represent management shall be appointed for terms of 3 years; 1 person who represents labor, 1 person who represents management, and 1 person who represents the general public shall be appointed for terms of 2 years; and 1 person who represents labor and 1 person who represents management shall be appointed for terms of 1 year. A vacancy shall be

filled by appointment for the balance of the unexpired term by the governor in the same manner as original appointments.

(3) Four members of the general industry safety standards commission shall represent the management of principal industries in the state, 1 of which shall represent a company with 200 or fewer employees, and 1 of which shall represent public employers of this state. Four members shall represent labor with not more than 1 from the same international union, 1 of which shall represent the public employees of this state. One member shall be a member at large representing the general public.

(4) The general industry safety standards commission shall elect 1 member as chairperson and elect other officers as it considers necessary.

(5) A majority of the general industry safety standards commission members constitutes a quorum if at least 1 representative of management and 1 representative of labor are in attendance. The general industry safety standards commission shall meet not less than 4 times in a calendar year at the call of the chairperson or the director of labor, or upon the request of 4 members.

(6) The per diem compensation of the general industry safety standards commission members, other than the secretary, and the schedule for reimbursement of expenses shall be established annually by the legislature.

History: 1974, Act 154, Eff. Jan. 1, 1975;—Am. 1975, Act 105, Imd. Eff. June 6, 1975;—Am. 1978, Act 455, Imd. Eff. Oct. 16, 1978;—Am. 1991, Act 105, Imd. Eff. Oct. 3, 1991.

408.1016 Promulgation, expression, and adoption of standards by general industry safety standards commission.

Sec. 16. (1) The general industry safety standards commission may promulgate standards in accordance with this act to prevent accidents in places of employment and to protect the life and safety of employees. Where another state agency has rules promulgated before the effective date of this act which regulate a place of employment relative to the safety of the public, the rules of the other state agency apply only to the safety of the public. If practicable, the standards promulgated shall be expressed in terms of objective criteria and of the performance desired.

(2) Until April 1, 1992, adoption of a standard shall be by a majority of the members present if a quorum is present. Beginning April 1, 1992, any action taken by the general industry safety standards commission requires an affirmative vote of not less than 4 members of the commission, including at least 1 representative of labor and 1 representative of management.

History: 1974, Act 154, Eff. Jan. 1, 1975;—Am. 1978, Act 455, Imd. Eff. Oct. 16, 1978;—Am. 1991, Act 105, Imd. Eff. Oct. 3, 1991

Administrative rules: R 408.491 et seq.; R 408.1200; R 408.3901 et seq.; R 408.10001 et seq.; R 408.14511 et seq.; and R 408.45101 et seq. of the Michigan Administrative Code.

408.1018 Construction safety standards commission; creation; director of labor as secretary; appointment, qualifications, and terms of members; vacancy; quorum; meetings; election of chairman and officers; compensation and expenses.

Sec. 18. (1) The construction safety standards commission is created in the department of labor.

(2) The construction safety standards commission consists of the director of labor ex officio without vote who shall serve as secretary of the construction safety standards commission and 9 members appointed by the governor by and with the advice and consent of the senate. The terms of the members shall be for 3 years or until his or her successor is appointed and qualified. Of those members initially appointed, 2 persons who represent labor and 2 persons who represent management shall be appointed for terms of 3 years; 1 person who represents labor, 1 person who represents management, and 1 person who represents the general public shall be appointed for terms of 2 years; and 1 person who represents labor and 1 person who represents management shall be appointed for terms of 1 year. Vacancies shall be filled by appointment for the balance of the unexpired term by the governor in the same manner as original appointments.

(3) Four members of the construction safety standards commission shall be actively engaged in construction operations on the management level, 1 of which shall represent public employers of this state. Four members shall be actively engaged in construction operations on the employee level, 1 of which shall represent public employees of this state. One member shall be a member at large representing the general public.

(4) A majority of the members of the construction safety standards commission constitutes a quorum if at least 1 representative of management and 1 representative of labor are in attendance. The construction safety standards commission shall meet not less than 4 times in a calendar year at the call of the chairperson or the director of labor, or upon the request of 4 members.

(5) The construction safety standards commission shall elect 1 member as chairperson and elect other

officers as it considers necessary.

(6) The per diem compensation of the construction safety standards commission members, other than the secretary, and the schedule for reimbursement of expenses shall be established annually by the legislature.

History: 1974, Act 154, Eff. Jan. 1, 1975;—Am. 1975, Act 105, Imd. Eff. June 6, 1975;—Am. 1991, Act 105, Imd. Eff. Oct. 3, 1991.

408.1019 Promulgation, expression, and adoption of standards by construction safety standards commission.

Sec. 19. (1) The construction safety standards commission may promulgate construction safety standards in accordance with this act and based upon, but not limited to, generally accepted nationwide engineering standards and practices designed to prevent accidents and to protect the life and safety of employees engaged in construction operations. If practicable, the standards promulgated shall be expressed in terms of objective criteria and of the performance desired.

(2) Until April 1, 1992, adoption of a standard shall be by a majority of the members present if a quorum is present. Beginning April 1, 1992, any action taken by the construction safety standards commission requires an affirmative vote of not less than 4 members of the commission, including at least 1 representative of labor and 1 representative of management.

History: 1974, Act 154, Eff. Jan. 1, 1975;—Am. 1991, Act 105, Imd. Eff. Oct. 3, 1991.

Administrative rules: R 408.40101 et seq. and R 408.41401 et seq. of the Michigan Administrative Code.

408.1021 Continuation of safety standards; consulting with advisory committees as condition of promulgating proposed standard; selection, qualifications, compensation, and expenses of members; emergency standards; promulgation of approved standard.

Sec. 21. (1) Standards promulgated by the general industry safety standards commission under the authority of former Act No. 282 of the Public Acts of 1967, and standards promulgated by the construction safety standards commission under the authority of former Act No. 89 of the Public Acts of 1963, which are in effect on January 1, 1975 are continued under section 31 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being section 24.231 of the Michigan Compiled Laws.

(2) Before a proposed standard, except an emergency standard, is promulgated, the appropriate commission shall appoint and consult with an advisory committee which shall be representative of the major interests affected by the proposed standard. The members of an advisory committee shall be selected on the basis of their experience and competence in the subject of the proposed standard. At least 1 member of each advisory committee shall be a person who devotes a major portion of time to safety functions.

(3) The per diem compensation and the schedule for reimbursement of expenses of members of the general industry safety standards advisory committees and the construction safety standards advisory committees shall be established annually by the legislature.

(4) The director of labor shall promulgate an emergency standard in compliance with section 48 of Act No. 306 of the Public Acts of 1969, as amended, being section 24.248 of the Michigan Compiled Laws, when the emergency standard is necessary to protect employees. If the director of labor is promulgating an emergency standard on a matter addressed by a federal standard, the director of labor shall promulgate a standard that is substantially similar to the federal standard unless he or she determines and certifies that the federal standard is clearly inconsistent with the criteria set forth in section 9, 16, or 19, or a combination thereof.

(5) Except for a standard adopted by reference pursuant to section 14, a standard approved by the appropriate commission pursuant to section 16 or 19 shall be promulgated pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

History: 1974, Act 154, Eff. Jan. 1, 1975;—Am. 1975, Act 152, Imd. Eff. July 9, 1975;—Am. 1978, Act 455, Imd. Eff. Oct. 16, 1978;—Am. 1979, Act 149, Eff. Mar. 27, 1980;—Am. 1991, Act 105, Imd. Eff. Oct. 3, 1991.

Compiler's note: Act 89 of 1963 and Act 282 of 1967, referred to in this section, were repealed by Act 154 of 1974.

Administrative rules: R 408.10001 et seq.; R 408.40101 et seq.; and R 408.41401 et seq. of the Michigan Administrative Code.

408.1023 Occupational health standards commission; creation; director of public health as secretary; appointment, qualifications, and terms of members; vacancy; quorum; meetings; election of chairman and officers; compensation and expenses.

Sec. 23. (1) The occupational health standards commission is created in the department of public health.

(2) The occupational health standards commission consists of the director of public health ex officio without vote who shall serve as secretary of the occupational health standards commission and 9 members appointed by the governor by and with the advice and consent of the senate. The terms of the members shall be for 3 years or until his or her successor is appointed and qualified. Of those members initially appointed, 2

persons who represent labor and 2 persons who represent management shall be appointed for terms of 3 years; 1 person who represents labor, 1 person who represents management, and 1 person who represents the general public shall be appointed for terms of 2 years; and 1 person who represents labor and 1 person who represents management shall be appointed for terms of 1 year. A vacancy shall be filled for the balance of the unexpired term in the same manner as the original appointments.

(3) Four members shall represent the management of principal industries in the state, 1 of which shall represent a company with 200 or less employees, and 1 of which shall represent the public employers of this state. Four members shall represent labor with not more than 1 from the same international union, 1 of which shall represent the public employees of this state. One member shall represent the general public.

(4) The occupational health standards commission shall elect 1 member as chairperson and elect other officers as it considers necessary.

(5) A majority of the occupational health standards commission constitutes a quorum if at least 1 representative of management and 1 representative of labor are in attendance. The occupational health standards commission shall meet not less than 4 times in a calendar year at the call of the chairperson or the director of public health, or upon request of 4 members.

(6) The per diem compensation of the occupational health standards commission members, other than the secretary, and the schedule for reimbursement of expenses shall be established annually by the legislature.

History: 1974, Act 154, Eff. Jan. 1, 1975;—Am. 1975, Act 105, Imd. Eff. June 6, 1975;—Am. 1991, Act 105, Imd. Eff. Oct. 3, 1991.

408.1024 Consulting with advisory committee as condition of promulgating proposed occupational health standard; selection, qualifications, compensation, and expenses of members; continuation of occupational health standards; adoption and promulgation of occupational health standard; requirements for standard; emergency standard; contents of standard; availability and costs of medical examination or test; religious objection.

Sec. 24. (1) Before a proposed standard, except an emergency standard, is promulgated, the commission shall appoint and consult with an advisory committee which shall be representative of the major interests affected by the proposed standard. The members of the advisory committee shall be selected on the basis of their experience and competence in the subject of the proposed standard. At least 1 member of each advisory committee shall be a person who devotes a major portion of time to occupational health functions.

(2) The per diem compensation and the schedule for reimbursement of expenses for members of the occupational health standards advisory committees shall be established annually by the legislature.

(3) Standards governing occupational health promulgated by the director of public health that are in effect on January 1, 1975 are continued under section 31 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being section 24.231 of the Michigan Compiled Laws.

(4) The occupational health standards commission shall promulgate an occupational health standard pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws, except for standards adopted by reference pursuant to section 14. Until April 1, 1992, adoption of a standard shall be by a majority of the members present if a quorum is present. Beginning April 1, 1992, any action taken by the occupational health standards commission requires an affirmative vote of not less than 4 members of the commission, including at least 1 representative of labor and 1 representative of management.

(5) When promulgating occupational health standards, the occupational health standards commission shall promulgate a standard that most adequately assures, to the extent feasible and on the basis of the best available evidence, that an employee will not suffer material impairment of health or functional capacity, even if the employee has regular exposure to a hazard dealt with by the standard for the period of his or her working life.

(6) The director of public health shall promulgate an emergency standard pursuant to section 48 of Act No. 306 of the Public Acts of 1969, as amended, being section 24.248 of the Michigan Compiled Laws, when the director finds that employees are exposed to substances or agents determined to be toxic or physically harmful and the emergency standard is necessary to protect employees from that danger. If the director of public health is promulgating an emergency standard on a matter addressed by a federal standard, the director of public health shall promulgate a standard that is substantially similar to the federal standard unless he or she determines and certifies that the federal standard is clearly inconsistent with the criteria set forth in section 9 or 24, or both.

(7) A standard shall prescribe appropriate forms of warning that are necessary to insure that employees are apprised of health hazards to which they are exposed, relevant symptoms, and the conditions and precautions for safe use or exposure, including appropriate emergency treatment. If appropriate, a standard shall prescribe

suitable protective equipment, control, or technological procedures to be used and shall require an employer to monitor or measure employee exposure, to allow employees or their representatives to observe the monitoring and have access to the records of the monitoring, and to conduct the monitoring in a manner that is necessary for the protection of the employees' health. Former employees shall have access to the records indicating their exposure to toxic materials and harmful physical agents.

(8) If appropriate, the occupational health standards commission shall prescribe by standard that medical examinations or tests are made available, at the employer's cost, to employees to determine if they are adversely affected by exposure to health hazards. If the examination is performed by a physician other than a physician who is retained for that purpose by the employer, the employer is responsible only for the reasonable costs of the examination, and only for costs related to the performance of the examination required by the standard. The results of the examinations or tests shall be furnished to the employer, the employee, and upon request of the employee, to the employee's personal physician, and upon request of the director of public health, to the director of public health by the employer. However, this act does not authorize or require medical examinations, immunizations, or treatments for those who object to them on religious grounds, except where necessary for the protection of the health or safety of others.

History: 1974, Act 154, Eff. Jan. 1, 1975;—Am. 1979, Act 149, Eff. Mar. 27, 1980;—Am. 1991, Act 105, Imd. Eff. Oct. 3, 1991.

Compiler's note: For transfer of powers and duties of the occupational health standards commission in the bureau of environmental and occupational health from the department of public health to the director of the department of labor, see E.R.O. No. 1996-1, compiled at MCL 330.3101 of the Michigan Compiled Laws.

Administrative rules: R 325.2401 et seq.; R 325.2491 et seq.; R 325.3451 et seq.; R 325.18301 et seq.; R 325.35001 et seq.; R 325.51501 et seq.; R 325.52501 et seq.; R 325.70101 et seq.; and R 408.12101 et seq. of the Michigan Administrative Code.

408.1027 Temporary order granting variance from standard; rule or order for variance from standard.

Sec. 27. (1) An employer may apply to the department of labor or the department of public health for a temporary order granting a variance from a standard or a provision thereof. A temporary order shall be granted only if the employer files an application which meets the requirements of subsection (2) and establishes that the employer is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date, that the employer is taking all available steps to safeguard his employees against the hazards covered by the standard, and that the employer has an effective program for complying with the standard as quickly as practicable. A temporary order issued under this subsection shall prescribe the practices, means, methods, operations, and processes which the employer shall adopt and use while the order is in effect, and state in detail the employer's program for complying with the standard. A temporary order may be granted only after notice to employees and an opportunity for a hearing. However, the department of labor or the department of public health may issue an interim order to be effective until a decision is made on the basis of the hearing. A temporary order may not be in effect for longer than the period needed by the employer to achieve compliance with the standard or 1 year, whichever is lesser, except that the order may be renewed not more than twice so long as the requirements of this subsection are met and if an application for renewal is filed not less than 90 days before the expiration date of the order. An interim renewal of an order may not remain in effect for longer than 180 days.

(2) An application for a temporary order under this section shall contain:

- (a) A specification of the standard or portion thereof from which the employer seeks a variance.
- (b) A statement by the employer that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefor.
- (c) A statement of the steps the employer has taken and will take, with specific dates, to protect employees against the hazard covered by the standard.
- (d) A statement of when the employer shall comply with the standard and what steps the employer has taken and will take, with dates specified, to comply with the standard.
- (e) A certification that the employer has informed his employees of the application by giving a copy thereof to their authorized representative, posting a statement giving a summary of the application, and specifying where a copy may be examined at the place or places where notices to employees are normally posted and by other appropriate means. A description of how employees were informed shall be contained in the certification. The information to employees shall also inform the employees of their right to petition the department of labor or the department of public health for a hearing.

(3) The department of labor or the department of public health may grant a variance from a standard or a portion thereof when it determines that the variance is necessary to permit an employer to participate in an

experiment approved by it designed to demonstrate or validate new and improved techniques to safeguard the health or safety of workers.

(4) An affected employer may apply to the appropriate department for a rule or an order for a variance from a standard. Affected employees or their representatives shall be given notice of each application and an opportunity to participate in a hearing. The appropriate department shall issue a rule or an order if it determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the standard. The rule or order issued shall prescribe the conditions the employer shall maintain and the practices, means, methods, operations, and processes which he shall adopt and utilize to the extent they differ from the standard in question. The rule or the order may be modified or revoked upon application by an employer, employees, their representatives, or by the appropriate department on its own motion under this subsection at any time after 6 months from its issuance.

History: 1974, Act 154, Eff. Jan. 1, 1975.

408.1028 Violation of standard threatening physical harm; request for inspection; notice; determination; notification of condition presenting imminent danger; notification of violation of act or rule; inspection; confidentiality; procedures for informal review of decision; statement of final disposition; right to attend meetings.

Sec. 28. (1) An employee or employee representative, who believes that a violation of a standard exists that threatens physical harm to an employee, may request an inspection by giving written notice of the condition to the appropriate department. The notice shall set forth with reasonable detail the grounds for the request and shall be signed by the employee or employee representative giving the notice. Upon receipt of a complaint, and if the department determines there are reasonable grounds for the complaint, the department shall conduct an inspection. A copy of the request shall be provided the employer or the employer's agent not later than the time of the inspection. Upon the request of the person giving the notice, his or her name and the names of employees referred to in the notice shall not appear in the copy or on a record which is published, released, or made available. If the department determines that there are not reasonable grounds to believe that an inspection should be conducted, it shall notify, in writing, the complainant of its determination.

(2) If an employee or employee representative believes that a condition exists which may present an imminent danger to a person, the employee or employee representative may notify either the department of labor or the department of public health in the most expedient manner without regard to a written notice. Upon notification of an alleged imminent danger, the department shall cause an immediate inspection to be made or take other action that it finds necessary to abate the danger.

(3) Before or during an inspection of a place of employment, an employee, or a representative of employees, may notify the department representative responsible for conducting the inspection, in writing, of a violation of this act or of a rule promulgated under this act, which the employee or employee representative believes exists in the place of employment. If the department determines, after an inspection or investigation conducted upon a written notification from an employee or employee representative of an alleged violation, that there are not reasonable grounds to believe that the alleged violation exists, it shall notify, in writing, the complainant and the employer of its determination. Upon request of the person giving the notice, that person's name and the names of employees referred to in the notice shall not appear in the copy or on a record which is published, released, or made available to the employer or any other person.

(4) The department of labor and the department of public health shall establish procedures for informal review of any decision resulting from a request or notice, under this section, to inspect for an alleged violation. The appropriate department shall furnish the employees or representative of employees requesting a review a written statement of the final disposition of the notice or complaint and reasons for the disposition.

(5) An employee or the representative of the employee shall be afforded an opportunity, with or without compensation, to attend all meetings between the department of labor or the department of public health and an employer relative to that department's decision concerning a citation, abatement period, or proposed penalty.

History: 1974, Act 154, Eff. Jan. 1, 1975;—Am. 1979, Act 149, Eff. Mar. 27, 1980.

408.1029 Inspection and investigations; right of entry; warrant; witnesses; evidence; right of accompaniment; advance notice; tests and samples; evaluation; confidentiality of trade secrets; conference; liability for damages; discrimination prohibited; "wages and fringe

benefits” defined.

Sec. 29. (1) To implement this act, a department representative, upon presenting appropriate credentials, may enter without delay, and at reasonable times, a place of employment to physically inspect or investigate conditions of employment and all pertinent conditions, equipment, and materials in the place of employment, and to question privately the employer, owner, operator, agent, or an employee with respect to safety or health. The inspection or investigation shall be conducted without unreasonably disrupting the employer's operations.

(2) If permission to enter a place of employment is denied, the department may apply to the proper judicial officer for a warrant commanding the sheriff or a peace officer to aid the department in the conduct of an inspection or investigation to determine if there is a violation of this act or a rule promulgated under this act.

(3) In the conduct of inspections and investigations, the appropriate department may require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the circuit courts. In case of a contumacy, failure, or a refusal of a person to obey an order, the circuit court within the jurisdiction of which the investigation is conducted, or where the person is found or resides or transacts business, or the circuit court for the county of Ingham, upon application of the appropriate department, may issue an order requiring the person to appear and produce evidence or give testimony relating to the matter under investigation or in question, and a failure to obey the order of the court may be punished as a contempt.

(4) A representative of the employer and a representative authorized by the employees shall be given the opportunity to accompany the department representative during the inspection or investigation of a place of employment to aid the inspection or investigation, subject to rules promulgated by the department. In case of controversy, the department representative, at the time he or she goes into an establishment, shall determine who may walk around as employer and employee representatives. If a representative authorized by the employee does not participate, the department representative shall consult with a reasonable number of employees concerning matters of safety or health in the place of employment. The right of accompaniment may be denied by the department representative to a person whose conduct interferes with a fair and orderly inspection or investigation.

(5) In conducting or preparing to conduct an inspection or investigation, advance notice of the inspection or investigation shall not be given except in the following situations:

(a) In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible.

(b) In circumstances where the inspection most effectively can be conducted after regular business hours or where special preparations are necessary for an inspection.

(c) If necessary to assure the presence of representatives of the employer and employees, or the appropriate personnel needed to aid in the inspection.

(d) In other circumstances where the department determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

(6) Advance notice in any of the situations described in subsection (5) shall not be given more than 24 hours before the inspection or investigation is scheduled to be conducted, except in apparent imminent danger situations and in other unusual circumstances.

(7) During the conduct of an inspection or an investigation, the department representative may conduct tests and gather samples of materials and substances as are necessary to aid in the evaluation of the place of employment. In implementing this subsection, the confidentiality of trade secrets shall be protected as prescribed in this act.

(8) Subject to rules promulgated by the departments, following the completion of an inspection or investigation, an opportunity for a conference shall be afforded the employer; the employee or employee representative; and the employer and the employee or employee representative if a joint conference is requested.

(9) In the performance of duties in the administration and enforcement of this act, a department representative or an employee of the appropriate department shall not be personally liable for damages sustained by an action on his or her part, except for wanton and wilful negligence.

(10) An employee or the authorized representative of an employee who participates in an inspection or investigation, as provided in subsection (4), or the conference provided in subsection (8), as provided in this section, or the rules promulgated under this section, shall not suffer a loss of wages or fringe benefits, or be discriminated against in any manner, for time spent participating in the inspection, investigation, or conference. An employee or the authorized representative of an employee who suffers a loss of wages or fringe benefits, or is discriminated against in any manner, for participation in an inspection, investigation, or

conference, may file a discrimination complaint, and the department of labor may order appropriate relief, as provided in section 65. As used in this subsection and section 31(2), “wages and fringe benefits” means those terms as defined in section 1 of Act No. 390 of the Public Acts of 1978, being section 408.471 of the Michigan Compiled Laws.

History: 1974, Act 154, Eff. Jan. 1, 1975;—Am. 1979, Act 149, Eff. Mar. 27, 1980.

408.1030 Safety and health inspector at site of tunnel, shaft, caisson, or cofferdam; qualifications; powers and duties; cost of wages and fringe benefits; advising of and publishing regular and overtime rates; tunnel construction activity exceeding 60 hours per week; employer's responsibility not diminished.

Sec. 30. (1) The department of labor shall provide a full-time safety and health inspector at the site where a tunnel, shaft, caisson, or cofferdam is constructed or repaired under pressurized conditions. The inspector shall:

- (a) Have training and experience in, and knowledge of, pressurized tunnel construction.
- (b) Have training and experience in, and an understanding of, ventilation systems.
- (c) Have training and experience in, and knowledge of, the safety and health standards relating to pressurized tunnel construction.
- (d) Maintain a complete and detailed log of construction activity.
- (e) Test, monitor, and record the air quality in all work areas and unoccupied areas of the completed work.
- (f) Report immediately to the employer and affected employees the existence of an imminent danger or serious violation.

(g) Conduct investigations and enforce this act and rules promulgated and orders issued under this act.

(2) The contracting party for whom a tunnel is constructed or repaired under pressurized conditions shall pay the cost of the safety and health inspector's wages and fringe benefits. The cost shall be paid to the department of labor to the credit of the general fund of the state. The department of labor shall advise contracting parties upon request, and publish regularly the regular and overtime rates for the safety and health inspector required by this section.

(3) If the tunnel construction activity exceeds 60 hours per week, the department shall provide a full-time safety and health inspector for each 60 hours of tunnel construction activity or portion thereof.

(4) This section shall not diminish the employer's responsibility under this act.

History: Add. 1977, Act 293, Imd. Eff. Dec. 29, 1977;—Am. 1978, Act 115, Imd. Eff. Apr. 18, 1978.

408.1031 Determination of imminent danger; notice; order; tagging equipment or process; removal of tag; on site review; recommendation; discrimination prohibited; noncompliance with order; petition to restrain condition or practice; action against department; response to imminent danger complaint; opportunity to identify, label, or provide material safety data sheet for container.

Sec. 31. (1) When and as soon as a department representative determines that an imminent danger exists in a place of employment, the department representative shall inform the employer and the affected employees of a determination of the imminent danger. The department representative immediately shall recommend to the appropriate department director that an order be issued to require that steps be taken as may be necessary to avoid, correct, or remove the imminent danger. After receiving authorization for the issuance of an order from the appropriate department director, the department representative shall apply a tag to the equipment or process which is the source of the imminent danger identifying that an imminent danger exists. The tag shall be removed only by the department representative. At request of the employer, an area supervisor shall, within 24 hours after a request, make an on site review of any tagging and recommend continuance or removal. The order shall prohibit the employment or presence of an individual in locations or under conditions where imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove the imminent danger in a safe and orderly manner. In tagging the equipment or process which is the source of imminent danger and in issuing the order, consideration shall be given to any necessity to maintain the capacity of a continuous process operation and to the reestablishment of normal operations without a complete cessation of operations.

(2) An employer shall not permit an employee, other than an employee whose presence is necessary to avoid, correct, or remove the imminent danger, to operate equipment or engage in a process which has been tagged by the department and which is the subject of an order issued by the department identifying that an imminent danger exists. An employee who suffers a loss of wages or fringe benefits or is in any manner discriminated against for refusing to operate equipment or engage in a process which has been tagged by the

department and which is the subject of an order issued by the department, as provided in this section, may file a discrimination complaint, and the department of labor may order appropriate relief as provided in section 65. This section does not prohibit an employer from assigning an employee to an operation not affected by the imminent danger situation, subject to any collective bargaining agreement.

(3) Upon failure of the employer to promptly comply with a department order, as described in subsection (1), the appropriate department shall petition the circuit court having jurisdiction to restrain a condition or practice in a place of employment which the department determines causes the imminent danger.

(4) If the department arbitrarily or capriciously fails to seek relief under this section, an employee who may be injured by reason of the failure, or the representative of those employees, may bring action against the department in the circuit court having jurisdiction for a writ of mandamus to compel the department to seek an order and for further relief, as may be appropriate.

(5) The department of public health or the department of labor shall respond within 24 hours after receipt of an imminent danger complaint concerning an unknown and unlabeled container of chemicals or an imminent danger complaint concerning a container of hazardous chemicals that is not labeled or for which a material safety data sheet is not available as required by the standard incorporated by reference in section 14a and by sections 14b to 14 l.

(6) Before a department representative seeks authorization to issue an order pursuant to the procedures prescribed in subsection (1), an employer shall be given a reasonable opportunity to identify, label, or provide the material safety data sheet for the container which is the subject of the imminent danger determination.

History: 1974, Act 154, Eff. Jan. 1, 1975;—Am. 1979, Act 149, Eff. Mar. 27, 1980;—Am. 1986, Act 80, Imd. Eff. Apr. 7, 1986.

408.1033 Citation for violation; issuance; contents; presentation; mailing; posting; notification of compliance; failure to correct violation; notice in place of citation; rules; vacating citation.

Sec. 33. (1) If, as the result of an inspection or investigation, the department representative believes that an employer has violated this act, an order issued pursuant to this act, or a rule or standard promulgated pursuant to this act, he or she shall issue a citation immediately or within 90 days after the completion of the physical inspection or investigation. The citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of this act, or an order issued or a rule or standard promulgated pursuant to this act, alleged to have been violated. The citation shall state a reasonable time by which the violation is to be abated. The citation shall state on its face that it is an allegation of a violation. The date shall be set with due regard to the seriousness of the hazard and the difficulty of abating it. The citation and the proposed penalty, if any, may be presented to and shall, in each case, be sent by registered mail to the employer, and a copy shall be filed at the time of issuance with the appropriate department.

(2) The employer shall post a copy of the citation at or near the place of the violation, and the citation copy shall remain posted at that site until compliance is achieved or for 3 working days, whichever is later.

(3) The employer upon whom a citation is served shall notify the appropriate department of compliance with this act, an order issued pursuant to this act, or a rule or standard promulgated pursuant to this act.

(4) If an employer fails to correct a violation for which a citation was issued within the period permitted for its correction, the department shall notify the employer by registered mail of that failure and of the penalty proposed to be assessed under section 35 for the failure.

(5) If it is determined upon inspection or investigation that a violation of this act, an order issued pursuant to this act, or a rule or standard promulgated pursuant to this act exists, but that the conditions that constitute the violation have no direct or immediate relationship to the safety or health of workers, the department may issue a notice in place of a citation. A notice issued under this subsection shall be referred to as a “de minimis notice of violation”. The employer shall post a copy of the de minimis notice of violation at or near the place of violation for 3 working days. The department shall promulgate all necessary rules for administering the de minimis notice of violation.

(6) A citation for an alleged violation of this act, an order issued pursuant to this act, or a rule or standard promulgated pursuant to this act shall be vacated if it is shown that the employer has provided the equipment or training, educated employees regarding use of the equipment or implementation of the training, and taken reasonable steps including, where appropriate, disciplinary action to assure that employees utilize the equipment and comply with the training as referenced in this section.

History: 1974, Act 154, Eff. Jan. 1, 1975;—Am. 1979, Act 149, Eff. Mar. 27, 1980;—Am. 1996, Act 87, Imd. Eff. Feb. 27, 1996.

******* 408.1035 THIS SECTION IS REPEALED IF SECTION 14, AS AMENDED BY ACT 105 OF 1991, IS HELD TO BE UNCONSTITUTIONAL BY A COURT OF COMPETENT JURISDICTION AND THE ALLOWABLE TIME FOR FILING AN APPEAL HAS EXPIRED OR THE APPELLANT HAS EXHAUSTED**

408.1035 Violations; civil and criminal penalties; effective date of increases in civil penalties made pursuant to 1991 amendatory act.

Sec. 35. (1) An employer who receives a citation for a serious violation of this act, an order issued pursuant to this act, or a rule or standard promulgated under this act shall be assessed a civil penalty of not more than \$7,000.00 for each violation.

(2) An employer who fails to correct a violation for which a citation was issued within the period permitted for its correction may be assessed a civil penalty of not more than \$7,000.00 for each day during which the failure or violation continues. A period permitted for corrections does not begin to run until the date of the final order of the board if a review proceeding before a board is initiated by the employer in good faith and not solely for delay or avoidance of a penalty.

(3) An employer who receives a citation for a violation of this act, an order issued pursuant to this act, or a rule or standard promulgated under this act, which violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of not more than \$7,000.00 for each violation.

(4) An employer who willfully or repeatedly violates this act, an order issued pursuant to this act, or a rule or standard promulgated under this act may be assessed a civil penalty of not more than \$70,000.00 for each violation, but not less than \$5,000.00 for each willful violation.

(5) An employer who willfully violates this act, an order issued pursuant to this act, or a rule or standard promulgated under this act which causes the death of an employee is guilty of a felony and shall be fined not more than \$10,000.00, or imprisoned for not more than 1 year, or both. If the conviction is the second under this act, the person shall be fined not more than \$20,000.00, or imprisoned for not more than 3 years, or both.

(6) An employer who violates a posting requirement prescribed under this act shall be assessed a civil penalty of not more than \$7,000.00 for each violation.

(7) A person who knowingly makes a false statement, representation, or certification in an application, record, report, plan, or other document filed or required to be maintained pursuant to this act, or who fails to maintain or transmit a record or report as required under section 61, is guilty of a misdemeanor and shall be fined not more than \$10,000.00, or imprisoned for not more than 6 months, or both.

(8) A person who gives advance notice of an investigation or an inspection to be conducted under this act without authority from the appropriate director or the designee of the director is guilty of a misdemeanor and shall be fined not more than \$1,000.00, or imprisoned for not more than 6 months, or both.

(9) The department of labor or the department of public health, if the employer is a public employer, instead of applying a civil penalty otherwise applicable to an employer under this section, may request that the attorney general seek a writ of mandamus in the appropriate circuit court to compel compliance with a citation, including the terms of abatement.

(10) A person shall not assault a department representative or other person charged with enforcement of this act in the performance of that person's legal duty to enforce this act. A person who violates this subsection is guilty of a misdemeanor. A prosecuting attorney having jurisdiction of this matter and the attorney general knowing of a violation of this section may prosecute the violator.

(11) The increases in the civil penalties of subsections (1), (2), (3), (4), and (6) made pursuant to the 1991 amendatory act that added this subsection shall take effect April 1, 1992.

History: 1974, Act 154, Eff. Jan. 1, 1975;—Am. 1977, Act 300, Eff. Mar. 30, 1978;—Am. 1979, Act 149, Eff. Mar. 27, 1980;—Am. 1991, Act 105, Imd. Eff. Oct. 3, 1991.

Compiler's note: Sections 4 and 5 of Act 105 of 1991 read as follows:

"Section 4. If any provision of section 14 of this amendatory act is held to be unconstitutional by a court of competent jurisdiction and the allowable time for filing an appeal has expired or the appellant has exhausted all of his or her avenues of appeal, section 35 of Act No. 154 of the Public Acts of 1974, being section 408.1035 of the Michigan Compiled Laws, is repealed.

"Section 5. Section 35a of this amendatory act shall not take effect unless the condition described in enacting section 4 is met and section 35 of Act No. 154 of the Public Acts of 1974, being section 408.1035 of the Michigan Compiled Laws, is repealed."

***** 408.1035a.added THIS ADDED SECTION TAKES EFFECT WHEN ANY PROVISION OF SECTION 14 IS HELD TO BE UNCONSTITUTIONAL BY A COURT OF COMPETENT JURISDICTION, THE ALLOWABLE TIME FOR FILING AN APPEAL HAS EXPIRED OR THE APPELLANT HAS EXHAUSTED ALL AVENUES OF APPEAL, AND SECTION 35 IS REPEALED *****

408.1035a.added Violations; civil and criminal penalties.

Sec 35a. (1) An employer who receives a citation for a serious violation of this act, an order issued pursuant to this act, or a rule or standard promulgated under this act shall be assessed a civil penalty of not more than \$1,000.00 for each violation.

(2) An employer who fails to correct a violation for which a citation was issued within the period permitted for its correction may be assessed a civil penalty of not more than \$1,000.00 for each day during which the failure or violation continues. A period permitted for corrections does not begin to run until the date of the final order of the board if a review proceeding before a board is initiated by the employer in good faith and not solely for delay or avoidance of a penalty.

(3) An employer who receives a citation for a violation of this act, an order issued pursuant to this act, or a rule or standard promulgated under this act, which violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of not more than \$1,000.00 for each violation.

(4) An employer who willfully or repeatedly violates this act, an order issued pursuant to this act, or a rule or standard promulgated under this act may be assessed a civil penalty of not more than \$10,000.00 for each violation.

(5) An employer who willfully violates this act, an order issued pursuant to this act, or a rule or standard promulgated under this act which causes the death of an employee is guilty of a felony and shall be fined not more than \$10,000.00, or imprisoned for not more than 1 year, or both. If the conviction is the second under this act, the person shall be fined not more than \$20,000.00, or imprisoned for not more than 3 years, or both.

(6) An employer who violates a posting requirement prescribed under this act shall be assessed a civil penalty of not more than \$1,000.00 for each violation.

(7) A person who knowingly makes a false statement, representation, or certification in an application, record, report, plan, or other document filed or required to be maintained pursuant to this act, or who fails to maintain or transmit a record or report as required under section 61, is guilty of a misdemeanor and shall be fined not more than \$10,000.00, or imprisoned for not more than 6 months, or both.

(8) A person who gives advance notice of an investigation or an inspection to be conducted under this act without authority from the appropriate director or the designee of the director is guilty of a misdemeanor and shall be fined not more than \$1,000.00, or imprisoned for not more than 6 months, or both.

(9) The department of labor or the department of public health, if the employer is a public employer, instead of applying a civil penalty otherwise applicable to an employer under this section, may request that the attorney general seek a writ of mandamus in the appropriate circuit court to compel compliance with a citation, including the terms of abatement.

(10) A person shall not assault a department representative or other person charged with enforcement of this act in the performance of that person's legal duty to enforce this act. A person who violates this subsection is guilty of a misdemeanor. A prosecuting attorney having jurisdiction of this matter and the attorney general knowing of a violation of this section may prosecute the violator.

History: Add. 1991, Act 105, Eff. (pending).

Compiler's note: Sections 4 and 5 of Act 105 of 1991 read as follows:

"Section 4. If any provision of section 14 of this amendatory act is held to be unconstitutional by a court of competent jurisdiction and the allowable time for filing an appeal has expired or the appellant has exhausted all of his or her avenues of appeal, section 35 of Act No. 154 of the Public Acts of 1974, being section 408.1035 of the Michigan Compiled Laws, is repealed.

"Section 5. Section 35a of this amendatory act shall not take effect unless the condition described in enacting section 4 is met and section 35 of Act No. 154 of the Public Acts of 1974, being section 408.1035 of the Michigan Compiled Laws, is repealed."

408.1036 Civil penalties; assessment; schedule; payment; recovering unpaid penalty.

Sec. 36. (1) The board shall assess civil penalties, considering the size of the business, the seriousness of the violation, the good faith efforts of the employer, and the history of previous citations, and may establish a schedule of civil penalties.

(2) Beginning April 1, 1992, the department of labor and the department of public health shall administer and enforce the assessment of civil penalties in a manner that is consistent with the administration and enforcement of civil penalties by the federal occupational safety and health administration.

(3) A civil penalty owed under this act shall be paid to the department of labor or the department of public health, whichever is appropriate, within 15 working days after the date the penalty becomes a final order of the board, not subject to further agency or judicial review. Beginning April 1, 1992, a civil penalty shall be credited to the state general fund.

(4) If a civil penalty remains unpaid beyond the period of time specified in subsection (3), the department of labor or the department of public health, whichever is appropriate, shall issue a letter to the employer demanding payment within 20 days after the date of the letter.

(5) If the penalty remains unpaid following the period specified in subsection (4), the appropriate department shall transmit information on the amount of the penalty and the name and address of the employer owing the penalty to the department of treasury.

(6) The department of treasury shall institute proceedings to collect the amount assessed as a civil penalty. The department of treasury shall offset the amount of the penalty against money owed by the state to the

employer. The department of treasury shall request that the attorney general recover the amount of the penalty remaining unpaid, after offsets, by instituting a civil action in the circuit court for the county in which the violation occurred or in the circuit court for the county in which the employer owing the penalty has its principal place of business.

History: 1974, Act 154, Eff. Jan. 1, 1975;—Am. 1979, Act 149, Eff. Mar. 27, 1980;—Am. 1986, Act 24, Imd. Eff. Mar. 10, 1986;—Am. 1991, Act 105, Imd. Eff. Oct. 3, 1991.

408.1037 Evidence and investigation of criminal violation.

Sec. 37. The department shall turn over evidence of a criminal violation of this act to the department attorney and shall assist in the investigation of a criminal violation.

History: 1974, Act 154, Eff. Jan. 1, 1975;—Am. 1977, Act 300, Eff. Mar. 30, 1978.

408.1041 Granting additional time for compliance, modification, or dismissal of citation and penalty; petition; procedure; effect of failure to petition; action by department; notice; finality of decision; appeal to board.

Sec. 41. Within 15 working days after receipt of a citation and proposed penalty, if any, an employer may petition the appropriate department for a grant of additional time for compliance, modification, or dismissal of the citation and a proposed penalty. Within 15 working days after the employer has received a citation, an employee or employee representative may petition the department of labor or the department of public health, whichever is appropriate, alleging the period of time fixed in the citation for the abatement of the violation is unreasonable. When a petition is submitted to the department by the employer, the employer shall transmit a copy immediately to the affected employees or the employee representative. When a petition is submitted to the department by an employee or employee representative, the department shall submit a copy of the petition immediately to the employer after deleting the name of the employee or employee representative, if so requested by the employee or employee representative. If the employer, employee, or employee representative does not petition the department within the 15 working days after receipt of the citation and proposed penalty, if any, the citation or proposed penalty shall be considered a final order of the board. Upon receipt of a petition, the department of public health or the department of labor, whichever is appropriate, may modify the time schedule for compliance, modify the citation, dismiss the citation, or dismiss or modify any proposed penalty. The appropriate department shall notify the employer of its decision within 15 working days after receipt of the petition. If the department meets with the employer regarding the employer's petition, the department shall notify the employee or employee representative that a meeting will be held and allow the attendance of the employee or employee representative. The employer shall promptly post the notice of the department's decision together with the appropriate citation. The decision of the department of labor or the department of public health shall become final 15 working days after receipt of the decision. Within 15 working days after receipt of the department of labor's or the department of public health's decision, an employer may appeal the decision to the board. Within 15 working days after the employer has received the decision of the director of labor or the director of public health, whichever is appropriate, an employee or employee representative may appeal the decision to the board with respect to the violation abatement period, classification of citation, or proposed penalty.

History: 1974, Act 154, Eff. Jan. 1, 1975;—Am. 1979, Act 149, Eff. Mar. 27, 1980.

408.1042 Hearing; order; rules of procedure; report of hearing officer.

Sec. 42. Upon receipt of a notice from an employer, employee, or an employee representative that the employer wishes to appeal the department's decision relative to a citation, abatement period, or proposed penalty or fine, or that an employee or an employee representative wishes to appeal the department's decision relative to a proposed abatement, classification of citation, or penalty, the department shall notify the board, and the board shall afford an opportunity for a hearing. If an employee or employee representative appeals the department's decision with respect to the violation abatement period, the appeal shall not stay the abatement period. The board shall cause an inquiry into the fact and issue an order based upon findings of fact, affirming, modifying, or rescinding the citation or proposed penalty or fine, or directing other appropriate relief. The order is final 20 days after receipt by affected parties. The rules of procedure prescribed by a board shall provide for a hearing officer to make a determination upon a proceeding before the board and shall provide affected employees or their employee representative an opportunity to participate as parties to the hearing under this section. A hearing officer shall make a report to the board of a determination which constitutes a final disposition of a proceeding. Copies of the report shall be served on all parties. The report of the hearing officer shall become the final order of the board within 30 days after filing with the board and parties, unless a member of the board directs that the report be reviewed and acted upon by the board.

History: 1974, Act 154, Eff. Jan. 1, 1975;—Am. 1979, Act 149, Eff. Mar. 27, 1980.

408.1043 Hearing; conduct of proceedings.

Sec. 43. Proceedings in a hearing shall be conducted in accordance with the procedures applicable to the trial of contested cases under Act No. 306 of the Public Acts of 1969, as amended.

History: 1974, Act 154, Eff. Jan. 1, 1975.

408.1044 Review of report of hearing officer; powers of board; order affirming or modifying abatement requirements; judicial review of order or standard.

Sec. 44. (1) In reviewing a report of a hearing officer, the board by a vote of not less than a majority of its members may:

- (a) Dismiss the citation.
- (b) Modify the citation.
- (c) Modify the abatement time of the citation.
- (d) Issue a final order sustaining the citation, the abatement time, or the assessed penalty.
- (e) Vacate or modify assessed penalties.

(2) Upon a showing by an employer that a good faith effort has been made to comply with the abatement requirements of a citation that has become a final order of the board as provided in this act, and that the abatement has not been completed because of circumstances beyond the reasonable control of the employer, the board, after a hearing, if requested by the employer, affected employees, or the department, shall issue an order affirming or modifying the abatement requirements in the citation.

(3) A person or department adversely affected or aggrieved by an order of the board issued under this act or a standard promulgated by a commission pursuant to this act may obtain judicial review of the order or standard pursuant to Act No. 306 of the Public Acts of 1969, as amended.

History: 1974, Act 154, Eff. Jan. 1, 1975.

408.1045 Cease operation order; enforcement proceedings.

Sec. 45. If an employer fails to comply with a final order of the board, the department may issue an order directing the employer to cease operating or render inoperable, in accordance with the order of the department, so much of his operation as is necessary to eliminate the hazard which is the subject of the order. When a cease operation order is not appropriate or not obeyed, the department shall refer the matter to the department attorney who shall promptly institute proceedings in the circuit court for the county in which the violation exists to enforce the department's orders.

History: 1974, Act 154, Eff. Jan. 1, 1975;—Am. 1977, Act 300, Eff. Mar. 30, 1978.

408.1046 Board of health and safety compliance and appeals; creation; appointment, qualifications, and terms of members; chairman; vacancy; scope of authority; meetings; quorum; prerequisite to official action; compensation and expenses; hearing; evidence; fees; rules; construction and application of identical state and federal standards.

Sec. 46. (1) A board of health and safety compliance and appeals is created within the department of labor. The board of health and safety compliance and appeals consists of 7 members appointed by the governor by and with the advice and consent of the senate for terms of 4 years or until their successors are appointed and qualified. Of the members first appointed 2 shall be appointed for 1 year, 2 shall be appointed for 2 years, 2 shall be appointed for 3 years, and 1 shall be appointed for 4 years. The first chairman of the board of health and safety compliance and appeals shall have a 4-year term. Vacancies shall be filled in the same manner as the original appointments except that a vacancy occurring during a term of office shall be filled by appointment for the unexpired term. Of those appointed to the board of health and safety compliance and appeals:

- (a) Three shall represent labor and shall, individually or jointly, represent each of the following areas in which they shall be actively engaged: (i) general industry; (ii) construction; and (iii) health.
- (b) Three shall represent management and shall, individually or jointly, represent each of the following areas in which they shall be actively engaged: (i) general industry; (ii) construction; and (iii) health.
- (c) One shall represent the general public and serve as chairman.
- (2) The board's authority shall apply to all safety and health citations, orders, and appeals.
- (3) The board shall meet as necessary to discharge its duties under this act and shall hold regular quarterly meetings in Lansing. Interim meetings may be called at any time by the chairman, the director of labor, the director of public health, or by 4 members thereof. A majority of the members of the board constitutes a quorum and official action can be taken only on the affirmative vote of a majority of the members. The per

diem compensation of the board and the schedule for reimbursement of expenses shall be established annually by the legislature.

(4) The board may order testimony to be taken at a hearing or by deposition in proceedings pending before it at any stage of the proceedings. A person may be compelled to appear and depose, and to produce books, papers, or documents in a proceeding under consideration by the board. Witnesses ordered to appear in any proceeding pending before the board or whose depositions are taken under this subsection, and the person taking the depositions shall be entitled to the same fees as paid for like services in circuit court.

(5) The board shall promulgate rules of procedure for the conduct of hearings or in response to appeals which rules shall provide for a hearing officer to make a determination upon a proceeding before the board.

(6) In construing or applying any state occupational safety or health standard which is identical to a federal occupational safety and health standard promulgated pursuant to 29 U.S.C. section 651 et seq., the board shall construe and apply the state standard in a manner which is consistent with any federal construction or application by the occupational safety and health review commission created pursuant to 29 U.S.C. section 661.

History: 1974, Act 154, Eff. Jan. 1, 1975;—Am. 1975, Act 105, Imd. Eff. June 6, 1975.

Administrative rules: R 408.21401 et seq. of the Michigan Administrative Code.

408.1048 Conducting business at public meeting; notice.

Sec. 48. The business which a board, commission, or committee created pursuant to this act may perform shall be conducted at a public meeting of the board, commission, or committee held in compliance with Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of a meeting of a board, commission, or committee created pursuant to this act shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

History: Add. 1978, Act 181, Imd. Eff. June 4, 1978.

408.1052 Department attorney as representative of departments, board, and commissions in litigation; board not considered party in judicial review proceeding.

Sec. 52. (1) The department attorney shall represent the department of labor, the department of public health, and the board and commissions established under this act in any litigation under this act.

(2) The board shall not be considered to be a party in a judicial review proceeding brought pursuant to this act.

History: 1974, Act 154, Eff. Jan. 1, 1975;—Am. 1977, Act 300, Eff. Mar. 30, 1978.

408.1054 Safety education and training division; creation; functions; newsletter; statement as to standard, rule, or order.

Sec. 54. (1) A safety education and training division is created within the department of labor.

(2) The functions of the safety education and training division shall include:

(a) The development and application of a statewide safety education and training program to familiarize employers, supervisors, employees, and union leaders with techniques of accident investigation and prevention.

(b) The development and utilization of consultative educational techniques to achieve long-range solutions to occupational safety problems.

(c) The development of training programs for the department of labor safety compliance staff.

(d) The acquisition, development, and distribution of occupational safety pamphlets, booklets, brochures, and other appropriate safety media as may be useful to accomplish the objectives of this division.

(e) The conduct of other activities as necessary for the implementation of an effective safety education and training program.

(f) The development and administration of a program for employers, with special emphasis on small business employers, providing technical and educational assistance.

(g) The development and implementation of a training and education program for department staff engaged in the administration and enforcement of this act.

(3) The department shall publish a newsletter at least quarterly.

(4) When a commission or the board, or the director of labor or the director of public health promulgates a standard or a rule or issues an order, a brief statement shall be included indicating the reasons for the action, which shall be published in the newsletter published under subsection (3).

History: 1974, Act 154, Eff. Jan. 1, 1975;—Am. 1979, Act 149, Eff. Mar. 27, 1980.

408.1055 Safety education and training fund.

Sec. 55. (1) A safety education and training fund is created. Except as provided in subsection (2), the fund shall be used to accomplish the objectives outlined in sections 54 and 56. The state treasurer shall be custodian of the fund and may invest the surplus of the fund in investments as in the state treasurer's judgment are in the best interest of the state. Earnings from those investments shall be credited to the fund. The state treasurer shall notify the director of labor, the director of public health, and the legislature of interest credited and the balance of the safety education and training fund as of December 31 of each year.

(2) On October 1, 1991, \$2,300,000.00 is transferred from the safety education and training fund to the state general fund for the operation of the programs specified in this act.

(3) The director of labor shall supervise and administer the fund. Except as provided in this section, the director shall annually assess a levy based on the total annual worker's disability compensation losses, excluding medical payments, paid in the immediately preceding calendar year by employers under the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, as amended, being sections 418.101 to 418.941 of the Michigan Compiled Laws. Except as provided in this section, each year the director shall assess upon and collect from each carrier and self-insured employer a sum equal to that proportion of 50% of the current fiscal year appropriation of safety education and training funds which the total worker's disability compensation benefits, exclusive of medical payments, paid by each carrier or each self-insured employer bears to the total of the compensation benefits paid by all carriers and self-insured employers during the immediately preceding calendar year. However, the total amount levied annually shall not exceed 3/4 of 1% of the total of the compensation benefits paid by all carriers and self-insured employers during the immediately preceding calendar year. Funds that are unexpended at the end of each fiscal year shall be returned to the safety education and training fund.

(4) If at any time during the fiscal year in which the assessment required by subsection (3) is made the balance of money in the safety education and training fund is less than \$1,500,000.00, the assessment shall equal the total fiscal year appropriation of safety education and training funds.

(5) Notice of the assessments shall be sent by the director of labor by mail to each carrier. Payment of assessments shall be received in the principal office of the department of labor before a date specified uniformly in the notice, but not less than 90 days after the date of mailing.

(6) The levy assessments shall constitute an element of loss for the purpose of establishing rates for worker's disability compensation insurance. Funds derived from this levy shall be deposited in the safety education and training fund and shall be appropriated by the legislature for the operation of this program.

(7) To enable full and complete legislative review of the assessment process, the department of labor, not later than September 30 of each year, shall submit to the regulatory subcommittees of the house and senate appropriations committees and the house and senate committees that consider labor matters a written report on the status of the safety education and training assessment required by this section. The report shall include, but is not limited to, information on the amount of the assessment, the percentage of the assessment as compared to losses, an explanation of all expenditures from the safety education and training fund, and the balance of money in the safety education and training fund.

History: 1974, Act 154, Eff. Jan. 1, 1975;—Am. 1977, Act 24, Eff. Mar. 30, 1978;—Am. 1986, Act 24, Imd. Eff. Mar. 10, 1986;—Am. 1991, Act 6, Imd. Eff. Apr. 11, 1991;—Am. 1991, Act 105, Imd. Eff. Oct. 3, 1991;—Am. 1993, Act 197, Eff. Dec. 28, 1994.

Compiler's note: Section 2 of Act 197 of 1993 provides as follows:

"Section 2. This amendatory act shall not take effect unless the state administrative board certifies in writing to the secretary of state by December 31, 1994 that an agreement for the transfer of all or substantially all of the assets and the assumption of all or substantially all of the liabilities of the state accident fund has been consummated with a permitted transferee pursuant to the requirements of section 701a of the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, being section 418.701a of the Michigan Compiled Laws."

408.1056 Occupational health education and training program.

Sec. 56. The department of public health shall conduct an occupational health education and training program with employees and employers for the prevention of occupational health hazards, to achieve long-range solutions to occupational health problems, and to train persons in the recognition and control of occupational health hazards.

History: 1974, Act 154, Eff. Jan. 1, 1975.

408.1057-408.1058 Repealed. 1991, Act 105, Eff. June 17, 1994.

Compiler's note: The repealed sections pertained to asbestos abatement projects in schools.

408.1058a-408.1058d Repealed. 1988, Act 439, Imd. Eff. Dec. 27, 1988.

Compiler's note: The repealed sections pertained to training course for employee or agent of asbestos abatement contractor.

408.1058e Repealed. 1991, Act 105, Eff. June 17, 1994.

Compiler's note: The repealed section pertained to asbestos abatement project records.

408.1058f Repealed. 1990, Act 2, Imd. Eff. Feb. 12, 1990.

Compiler's note: The repealed section pertained to notice of asbestos abatement projects.

408.1059, 408.1059a Repealed. 1991, Act 105, Eff. June 17, 1994.

Compiler's note: The repealed sections pertained to required training and a course on health and safety aspects of asbestos demolition, renovation, or encapsulation.

408.1059b Repealed. 1988, Act 439, Imd. Eff. Dec. 27, 1988.

Compiler's note: The repealed section pertained to penalty provisions.

408.1059c-408.1059e Repealed. 1991, Act 105, Eff. June 17, 1994.

Compiler's note: The repealed sections pertained to written materials relating to, and awareness training for, asbestos abatement projects.

408.1059f Repealed. 1988, Act 439, Imd. Eff. Dec. 27, 1988.

Compiler's note: The repealed section pertained to notice of asbestos abatement projects.

408.1060-408.1060d Repealed. 1991, Act 105, Eff. June 17, 1994.

Compiler's note: The repealed sections pertained to employer protections, prohibited conduct, and post-abatement procedures.

408.1060e, 408.1060f Repealed. 1991, Act 105, Imd. Eff. Oct. 3, 1991.

Compiler's note: The repealed sections pertained to repeal of MCL 408.1057 to 408.1060d and promulgation of rules.

408.1061 Records and reports; notice of fatalities or hospitalizations; access of employee to records; notice to employee of exposure and corrective action; federal requirements not negated.

Sec. 61. (1) An employer shall make, keep, and preserve accurate and timely records and reports of work illnesses and injuries and report the information to the appropriate department in a form and in accordance with rules promulgated by the departments under authority of this act for the purpose of developing information regarding the causes and prevention of occupational illnesses and injuries. The employer shall notify the department of consumer and industry services within 8 hours of a fatality or any hospitalization of 3 or more employees suffering injury from the same accident or illness from exposure to the same health hazard associated with their employment.

(2) An employer shall maintain accurate records of employee exposures to potentially toxic substances or harmful physical agents that are required to be monitored or measured by standards promulgated by the commissions. An employee or former employee shall have access to those records that indicate the employee's or former employee's own exposure to toxic materials or harmful physical agents.

(3) An employer shall promptly notify an employee who was or is being exposed to toxic materials or harmful physical agents in concentrations or at levels that exceed those prescribed by a rule or standard promulgated under this act, and shall inform an employee who is being exposed to those toxic materials or harmful physical agents of the corrective action being taken.

(4) This act does not negate the record keeping and reporting requirements prescribed by sections 18 and 24 of the occupational safety and health act of 1970, Public Law 91-596, 29 U.S.C. 667 and 673.

History: 1974, Act 154, Eff. Jan. 1, 1975;—Am. 1996, Act 437, Imd. Eff. Dec. 18, 1996.

408.1063 Confidentiality of trade secrets; protection; information available to public; identity of employee exempt from disclosure.

Sec. 63. (1) Information reported to or otherwise obtained by the department of labor or the department of public health, in connection with an inspection, investigation, or proceeding under this act that contains or that might reveal a trade secret, including information required to be made available under sections 14a through 14l and section 24(9) and (10), shall be considered confidential. In a proceeding under this act, the department of public health shall promulgate rules for the purpose of protecting trade secrets regarding information required to be made available under sections 14a through 14l and section 24(9) and (10), and the appropriate department, the board, or the court shall issue orders as may be appropriate to protect the confidentiality of trade secrets and to carry out the objectives of this act.

(2) Except as otherwise provided by this subsection and subsection (1), information reported to or

otherwise obtained by a department from an employee in connection with an inspection, investigation, or proceeding under this act shall be made available to the public pursuant to the freedom of information act, Act No. 442 of the Public Acts of 1976, as amended, being sections 15.231 to 15.246 of the Michigan Compiled Laws. The identity of an employee or any information that may lead to the identification of an employee who provides information pertaining to a possible violation or violations of this act shall be exempt from disclosure.

History: 1974, Act 154, Eff. Jan. 1, 1975;—Am. 1979, Act 149, Eff. Mar. 27, 1980;—Am. 1986, Act 80, Imd. Eff. Apr. 7, 1986.

Administrative rules: R 325.3451 et seq. of the Michigan Administrative Code.

408.1065 Discharging or discriminating against employee prohibited; complaint; investigation; order; notice; review; finality of determination; parties; hearings officers; conduct of proceedings; determination as final disposition; judicial review; venue; civil action to enforce order; powers of director of labor.

Sec. 65. (1) A person shall not discharge an employee or in any manner discriminate against an employee because the employee filed a complaint or instituted or caused to be instituted a proceeding under or regulated by this act or has testified or is about to testify in such a proceeding or because of the exercise by the employee on behalf of himself or herself or others of a right afforded by this act.

(2) An employee who believes that he or she was discharged or otherwise discriminated against by a person in violation of this section may file a complaint with the department of labor alleging the discrimination within 30 days after the violation occurs. Upon receipt of the complaint, the department of labor shall cause an investigation to be made as it considers appropriate. If, upon the investigation, the department determines that this section was violated, the department shall order all appropriate relief, including rehiring or reinstatement of an employee to his or her former position with back pay.

(3) The director of labor, within 90 days after the receipt of a complaint filed under this section, shall notify the complainant of the determination under subsection (2).

(4) The employer or employee may request a review of the department's determination within 15 working days after notification is issued. If a request for a review by either the employer or employee is not received by the department within 15 working days, in the absence of a showing of good cause for a late request, the department's determination is final. The employee, employer, and the department shall be parties to a proceeding before a hearings officer brought pursuant to this section.

(5) The director shall appoint hearings officers to make determinations in proceedings brought pursuant to this section. All proceedings in a hearing shall be conducted pursuant to the procedures applicable to the trial of contested cases under Act No. 306 of the Public Acts of 1969, as amended. The hearings officer shall affirm, modify, or rescind the order of the department and may order an employer who violates this section to pay attorney costs, hearing costs, and transcript costs. The hearings officer shall issue a determination which constitutes a final disposition of the proceedings to each party within 30 working days after the conclusion of the hearing. The determination of the hearings officer shall become the final agency order upon receipt by the parties.

(6) A party to the proceeding may obtain judicial review within 60 days after receipt of the determination of the hearings officer pursuant to Act No. 306 of the Public Acts of 1969, as amended. Venue for an appeal under this act shall be only in the circuit where the employee is a resident, where the employment occurred, or where the employer has a principal place of business.

(7) In absence of an appeal by an employer who has not complied with the determination of the hearings officer, the director of labor shall initiate, in the county where the violation occurred, in the county of Ingham, or in the county where the employer has its principal office, the civil action necessary to enforce an order of the department which has become a final agency order as prescribed in this act.

(8) For the purpose of an investigation or proceeding under this section, the director of labor or an authorized representative of the director may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of records or other documents which the department considers relevant or material to the inquiry.

History: 1974, Act 154, Eff. Jan. 1, 1975;—Am. 1977, Act 300, Eff. Mar. 30, 1978;—Am. 1979, Act 149, Eff. Mar. 27, 1980.

408.1067 Posting requirements; warning labels.

Sec. 67. (1) Where posting is required by this act, except for citations, the posting shall be centrally and conspicuously located with respect to all affected employees. If there is no place central to all affected employees, posting shall take place in as many locations as necessary to be normally observed by the affected employees. Where posting is necessary in other locations the posting shall be in accordance with rules

promulgated by the appropriate department.

(2) A rule or standard promulgated under this act shall where appropriate prescribe the use or posting of labels or other appropriate forms of warning which are necessary to insure that employees are apprised of all hazards to which they are exposed and proper conditions and precautions of safe use or exposure, including appropriate emergency treatment. Any warning labels which may be required by a standard or rule shall be consistent with warning labels prescribed by the federal government pursuant to 29 U.S.C. sections 651 et seq.

History: 1974, Act 154, Eff. Jan. 1, 1975.

408.1069 Rules; declaratory rulings; effect of standards adopted by reference or continued in effect.

Sec. 69. (1) The department of labor and the department of health may promulgate, amend, and rescind rules pursuant to the provisions of Act No. 306 of the Public Acts of 1969, as amended, with respect to matters necessary for the administration of this act.

(2) The commissions established pursuant to this act may promulgate, amend, and rescind rules of procedure pursuant to Act No. 306 of the Public Acts of 1969, as amended, for the conduct of their proceedings.

(3) Declaratory rulings which concern the application of occupational safety and health standards, promulgated pursuant to this act, to specific facts, shall be made solely by the director of labor or his authorized representative with respect to occupational safety standards or the director of public health or his authorized representative with respect to occupational health standards, pursuant to section 63 of Act No. 306 of the Public Acts of 1969.

(4) Any occupational safety or health standard adopted by reference pursuant to section 14, promulgated pursuant to this act, or continued in effect pursuant to sections 21(1) and 24(2) shall be deemed to supersede any occupational safety or health standard or rule promulgated pursuant to any other law of this state. However, where another state agency has authority to promulgate standards or rules applicable to the public safety or health, the rules and standards promulgated pursuant to this act shall not be deemed to supersede such other agency rules or standards but shall be deemed to have concurrent applicability with such rules and standards.

History: 1974, Act 154, Eff. Jan. 1, 1975.

Administrative rules: R 408.19901 et seq. and R 408.22101 et seq. of the Michigan Administrative Code.

408.1091 Pending proceedings continued.

Sec. 91. Any proceeding pending before the department of labor or the department of health shall be continued and be conducted and determined by the appropriate department in accordance with the statutes governing the proceedings.

History: 1974, Act 154, Eff. Jan. 1, 1975.

408.1093 Repeal.

Sec. 93. Act No. 285 of the Public Acts of 1909, as amended, being sections 408.51 to 408.94 of the Compiled Laws of 1970, Act No. 89 of the Public Acts of 1963, as amended, being sections 408.711 to 408.724 of the Compiled Laws of 1970, and Act No. 282 of the Public Acts of 1967, as amended, being sections 408.851 to 408.868 of the Compiled Laws of 1970, are repealed.

History: 1974, Act 154, Eff. Jan. 1, 1975.

408.1094 Effective date.

Sec. 94. (1) This act shall take effect on January 1, 1975, except as to public employers as specified in subsection (2).

(2) Standards adopted by reference pursuant to section 14 shall not be applicable to the state or political subdivisions until July 1, 1975.

History: 1974, Act 154, Eff. Jan. 1, 1975.